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SUPREME COURT, U.S.

NO. 82-5279

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH COURT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No.

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

QUESTION

Whether an employee of a community-based, non-profit corporation, under contract with a city to administer a Community Development Block grant received from the U.S. Department of Housing and Urban Development (HUD) is a "public official" according to the federal bribery statute, 18 U.S.C. 201.*

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*In addition to petitioner Arthur Dixson, James Lee Hinton was an appellant in the United States Court of Appeals for the Seventh Circuit.

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OPINION BELOW

The slip opinion of the court of appeals is provided in Appendix A, pp. 1A-10A.

JURISDICTION

The judgment of the court of appeals (Appendix B, p. 1B) was entered on July 8, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 201, the federal bribery statute (18 U.S.C.), provides in pertinent part:

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
> (1) being influenced in his performance of any official act; or
> (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
> (3) being induced to do or omit to do any act in violation of his official duty. . . .
>
> (a) For the purpose of this section:
> "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror. . . .
> "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public offical, in his official capacity, or in his place of trust or profit.

STATEMENT

After a jury trial in the United States District Court for the Central District of Illinois, petitioner was convicted on nine counts of violating the federal bribery statute, 18 U.S.C. 201(c) (1976). This conviction was based on evidence that petitioner, while executive director of United Neighborhood Incorporated (UNI), received kickbacks from housing contractors in exchange for awarding contracts to them (App. A, pp. 2A-3A). The court denied petitioner's pre-trial, trial, and post-trial motions (R. 24, Tr. 261-62, R. 46, respectively), because it rejected his contention that as an employee of UNI he was not a "public official" under Section 201.

1. During 1979 and 1980, the City of Peoria received a total of more than $1 million via a Community Development Block grant and a Federal Metro Reallocation grant from the U.S. Department of Housing and Urban Development (HUD) (App. A, p. 2A) to rehabilitate homes in a depressed area of the city (Tr. 123). [Both grants are governed by the Housing and Community Development Act of 1974, 42 U.S.C. 5301-5317 (App. A, p. 2A n.1)]. UNI entered into a contract with the city to administer these grants (App. A, p. 1A). The city required UNI to report back to it (App. A, p. 2A). The entire management of these grants, however, was left to UNI, with checks made payable to UNI and with the city neither inspecting UNI's books nor having anything to do with issuing housing contracts (App. A, p. 2A; Tr. 124, 127). During his employment with UNI, petitioner had no contact with the city, and all his duties were those assigned to him by his superiors in UNI (Tr. 265).

2. The court of appeals affirmed petitioner's conviction. It ruled that its decision in United States v. Mosley, 659 F.2d 812 (7th Cir. 1981) was dispositive in establishing that petitioner was a public official according to Section 201 (App. A, p. 3A). In Mosley the court held that a study of the legislative history of the Comprehensive Employment and Training Programs Act (CETA), 29 U.S.C. 801-822, manifests Congress's intent that the Secretary of Labor

retain supervisory control over the programs administered locally by prime sponsors. Id. at 815. Thus, although the defendant was a state employee, he still was acting on behalf of the federal government. Id.

Applying this standard, the court found that the Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and sub-grantees responsible for administering grant funds (App. A, p. 4A). The only evidence that the court gave for such federal supervision, however, was extensive regulations governing Community Block grants [i.e., 24 C.F.R. 570 (1980)] and the right of access to all books of sub-grantees, retained by the Secretary of HUD (i.e., id., Section 570.509). (App. A, p. 5A).

The petitioner in his appeal argued, inter alia, that he could not be convicted under Section 201, according to Mosley, because the HUD program manager who had the duty of overseeing the distribution of Community Block grants to the City of Peoria during 1979 and 1980 testified that he did not know, nor was he required to know, the identity of the UNI or any other sub-grantee. The court rejected this argument, saying that it attached no significance to this testimony because it is "of little probative value in assessing the pervasiveness of federal regulation of the program" (App. A, p. 8A n.3). Thus, the "federal supervision" required for an individual to be a public official under Section 201, according to Mosley, was attenuated to mean "subject to pervasive federal regulation."

REASONS FOR GRANTING THE WRIT

The court's holding is in direct conflict with the Second Circuit in United States v. Del Toro, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975) and United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), and dicta in United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1981) and Slater v. United States, 562 F.2d 58 (1st Cir. 1976). According to these cases, even if petitioner had been an employee of the City of Peoria, he would not qualify as a "public official" under Section 201. A fortiori, these circuits would find, by strict logical implication, that petitioner, who had no contact or dealings whatsoever with the City of Peoria during his employement with UNI, was not a "public official" according to Section 201.

In the instant case, the court acknowledged that the Housing and Community Development Act of 1974 "consolidated into one program several community development programs including the Model Cities program at issue in Loschiavo and Del Toro. . ." (App. A, p. 4A). It argued, however, that federal involvement in the Community Block Grant program was significantly more extensive that it had been under the Model Cities program, even though Senate Report No. 93-693, which it cited (App. A, p. 5A), states that this new block grant program of federal assistance to local communities incorporated many features of the Administration's revenue sharing Better Communitites Act and guaranteed to local communities a two-year federal cycle, "subject only to the meeting of minimum Federal performance standards." 1974 U.S. Code Cong. & Ad. News 4273.

Even conceding, however, that the Community Block Grant program of 1974, the successor to the Model Cities program, bespeaks greater federal regulation than its predecessor, still the court's decision contradicts these cited cases. In Del Toro, 513 F. 2d 656, the Second Circuit Court of Appeals held that an assistant administrator of a federally funded Model Cities program did not fall within the statutory definition of "public official" because he was employed by the city in a program administered through local agencies, and, therefore, was not acting on behalf of the federal government as required by Section 201(c). Id. at 662. "He was a city employee, carrying out a task delegated to him by his superior, another city employee." Id. The court held that a narrow construction of "public official" was mandated to avoid altering sensitive federal-state relations, in the absence of Congress's unambiguous intention to do so, and to observe the requirement of resolving any ambiguity in criminal statutes in favor of the defendant. Id., citing Rewis v. United States, 401 U.S. 808, 812 (1971).

In Loschiavo, 531 F. 2d 659, a case involving the same official as in Del Toro, the court specified that the test for determining whether a particular individual is a "public official" under Section 201 is not the type of public project or the amount of federal funding but "the character and attributes of the individual's employment relationship, if any, with the federal government." Id. at 661. The court suggested one practical way of making this determination was whether any federal agency has the power to hire or fire the individual in question. Id.

In Hollingshead, 672 F.2d at 753, the Ninth Circuit Court of Appeals accepted the Second Circuit test for determining whether a particular individual constitutes a "public official" under Section 201 -- namely, "the character and attributes of [the person's] . . . employment relationship with the federal government." The court noted that in Loschiavo and Del Toro the city official never dealt directly with HUD since his tasks were delegated to him by another city employee; consequently, he was not a public official under Section 201.

In Slater, 562 F.2d at 61, while affirming appellant's conviction under 41 U.S.C. 51-54, the Anti-Kickback Act, the First Circuit Court of Appeals cited Del Toro for the proposition that "it is doubtful that the federal laws against bribery and extortion, 18 U.S.C. 201 and 872, can be applied to Model Cities employees."

In the instant case, the court followed Mosley, 659 F.2d at 815-16, and ruled that "public official" must be given a broad construction in Section 201 to fulfill Congress's intention of protecting the public from the evil of corruption in public service (App. A, p. 6A). By implication it rejected the Second Circuit standard for determining whether an individual serves as a public official and held that petitioner's employment by the state did not preclude a determination that he was acting on behalf of the United States (App. A, p. 6A). Petitioner was, of course, neither an employee of the State of Illinois nor the City of Peoria but an employee of UNI, a non-profit corporation under contract with the city.

According to the Second Circuit and dicta of the First and Ninth Circuits, petitioner would not qualify as a public official if he had been a state or city official. A fortiori, the court's holding that he was a public official under the statute contradicts these other circuits. Applying the test of Del Toro, 513 F.2d at 661, no federal agency had the power to fire or hire petitioner. Applying the test of Hollingshead, 672 at 754, petitioner never dealt directly with HUD nor even the City of Peoria but solely with his superiors in UNI.

1. Unless this Court grants petitioner's motion for a writ of certiorari, the clear and irreconcilable conflict between the circuits will allow some individuals to be punished for conduct for which others will go free. Such inconsistency in the interpretation of Section 201 violates principles of fundamental fairness, equal protection, and due process. Also, because this statute potentially affects such a large number of individuals, it is urgent that this court resolve the conflict between the circuits.

2. The court's definition of who constitutes a public official under Section 201 is ambiguous and, therefore, violates the constitutional requirement that criminal statutes provide adequate notice. First, the court says that petitioner is a public official because of substantial federal supervision over cities and sub-grantees, which was intended by Congress and specified in the Housing and Community Development Act of 1974 (App. A, p. 4A). The court, however, ruled that this requirement of substantial federal supervision was met by "the pervasiveness of federal regulation of the program," and it said it gave no significance to the testimony of the HUD official who administered the Community Development grant in question that he neither knew of, nor had a duty to know, the identity of UNI, or any other sub-grantee (App. A, p. 8A n.3).

In another place, the court stated that petitioner was a public official because his salary and the entire cost of the program were funded by the federal government for federal objectives (App. A, p. 6A). Finally, the court ratified the broad interpretation it gave to Section 201 in Mosley (App. A, p. 6A). It found petitioner a public official because, as a federal agent, he had discretion to administer federal funds (App. A, p. 6A) and had the authority and power to influence or control the dispersal of public funds (App. A, p. 8A).

3. This Court should grant petitioner's motion for a writ of certiorari to determine whether Congress intended, when it passed Section 201, to give federal courts criminal jurisdiction over cases that heretofore have been left to the states. According to Del Toro, 513 F.2d at 662, Section 201 must be given a narrow construction because "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Rewis v. United States, 401 U.S. at

812. Because, however, the court has construed "federal supervision" to mean "federal regulation" and virtually any time the federal government disperses funds it also provides relevant regulations, the court's expansive construction of Section 201 in effect enables U.S. attorneys to prosecute any person who is alleged to have committed fraud in handling federal funds (e.g., state, city and local governmental employees, building contractors, pharmacists, physicians, and nursing home personnel).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 81-2206 and 81-2207

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES LEE HINTON and ARTHUR DIXSON,

Defendants-Appellants.

Appeal from the United States District Court for the
Central District of Illinois, Peoria Division.
No. 81-CR-10007—Robert D. Morgan, *Judge.*

ARGUED FEBRUARY 9, 1982—DECIDED JULY 8, 1982

Before PELL, *Circuit Judge,* FAIRCHILD, *Senior Circuit Judge,* and ESCHBACH, *Circuit Judge.*

PELL, *Circuit Judge.* The appellants, Arthur Dixson and James Lee Hinton, were found guilty by a jury of violating 18 U.S.C. § 201(c)(1) and (2) by soliciting money in exchange for the award of housing rehabilitation contracts funded under the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5320 (Supp. III 1979) (the Act). Dixson and Hinton were, respectively, the Executive Director and Housing Rehabilitation Coordinator of a community-based, nonprofit corporation called United Neighborhoods, Inc. (UNI). Pursuant to the Act, UNI had entered into a contract with the city of Peoria to administer federal funds awarded to Peoria under a Community Development

Block Grant and a Federal Metro Reallocation Grant from the United States Department of Housing and Urban Development (HUD).[1] The Community Development Block Grant program administered by UNI was entirely sponsored by federal funds, which paid UNI's costs as well as the salaries of its employees. The primary issue in these appeals is whether Dixson and Hinton were "public officials" within the meaning of 18 U.S.C. § 201(c) (1976).

During 1979 and 1980, the city of Peoria received a Community Development Block Grant and Metro Reallocation Grant from HUD. The purpose of these grants was community development, including the rehabilitation of residential structures. In accordance with the Act and regulations pursuant to the Act, the city contracted with UNI to administer the grant funds. For housing that met the statutory and regulatory criteria for the funds, UNI had the responsibility of soliciting bids from contractors to perform the housing rehabilitation. After the receipt of bids, the Housing Committee of UNI was responsible for awarding the contract to the successful bidder. There was testimony, however, from several witnesses that contracts were awarded without obtaining the approval of the Housing Committee. Successful bidders were paid for their work by UNI from the grant funds it had received from the city, which had previously received the funds from HUD. UNI had to account to the city for the expenditure of the federal funds, and the city, in turn, was responsible for accounting to HUD for all funds it had received.

Ora Logsdon, a contractor who received several housing contracts from UNI, was the primary Government witness against Dixson and Hinton. He testified that he had received rehabilitation contracts for ten houses from UNI pursuant to an agreement with Dixson and

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[1] Both Community Development Block grants and Federal Metro Reallocation grants are governed by the Housing and Community Development Act of 1974. These grant programs shall be referred to collectively as the Community Development Block Grant program.

Hinton to pay them 10% of the amount of each contract. He said he would pay Dixson and Hinton their 10% after cashing the checks he had received for his work from UNI.

Gerald Lilly, another contractor, testified that he had been told by Dixson that he should pay 10% of the contract price in order to receive a rehabilitation contract. At one point Lilly met with Dixson and Hinton who helped him prepare his bids. Hinton told Lilly on which houses to bid and recommended that the amount of one bid be lowered. Hinton also reassured Lilly that submitting the bids was just a formality. Subsequently Lilly paid Dixson when he received his first check from UNI.

I. Hinton and Dixson as "Public Officials"

Section 201(c)(1) of 18 U.S.C. prohibits any "public official" from directly or indirectly asking, demanding, soliciting, accepting, or receiving anything of value in return for being influenced in the performance of any official act. 18 U.S.C. § 201(c)(1) (1976). Section 201(a) defines "public official" to include any person "acting for or on behalf of the United States or any department, agency or branch of Government thereof." 18 U.S.C. § 201(a) (1976). Both appellants, relying primarily on the decisions of the Second Circuit in *United States v. Loschiavo*, 531 F.2d 659 (2d Cir. 1976), and *United States v. Del Toro*, 513 F.2d 656 (2d Cir.), *cert. denied*, 423 U.S. 826 (1975), assert that they cannot be considered "public officials" because they were not acting for or on behalf of the United States.

This court's recent decision in *United States v. Mosley*, 659 F.2d 812 (7th Cir. 1981), is dispositive of the arguments advanced by the appellants in support of their position that they were not acting for or on behalf of the United States. In *Mosley*, we distinguished *Loschiavo* and *Del Toro* as involving a separate statutory scheme (the "Model Cities" program) from that in *Mosley* (the Comprehensive Employment and Training or "CETA" program). In light of the statute, regulations, and legislative history of the CETA program, we concluded that federal government involvement in the CETA program was more substantial than that in the Model Cities program, to the extent that Mosley was acting for or on behalf of the United States in the CETA program. This conclusion was buttressed by review of Mosley's position within the federal program. *Id.* at 814-15.

The present case involves a different statutory scheme from that in *Mosley*, and, for that matter, from that in *Loschiavo* and *Del Toro*. Although the Act consolidated into one program several community development programs including the Model Cities program at issue in *Loschiavo* and *Del Toro*, federal involvement in the Community Development Block Grant program differs significantly from what it had been in the Model Cities program. The Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and all sub-grantees responsible for local distribution of grant funds. Two of the stated objectives of the Act are "substantial expansion of the greater continuity in the scope and level of Federal assistance" and the "development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid." 42 U.S.C. § 5301(b)(2) and (d) (Supp. III 1979).

In order for an applicant to receive a grant, the applicant must submit to the Secretary of HUD, *inter alia*, a three-year comprehensive community development plan, a detailed program of implementation, and a housing assistance plan, that must be approved by the Secretary prior to funding. *Id.* § 5304. The activities which may be performed under a Community Development Block Grant program are circumscribed in great detail. *Id.* § 5305. In addition, annual performance reports must be submitted with an assessment of compliance with the objectives of the Act. The Secretary is also directed to make reviews and audits of the grantees' programs on at least an annual basis to determine whether the grantees are meeting the federal standards and to adjust federal funds in accordance with such findings. *Id.*

§ 5304(d). The Secretary reserves the right to audit the financial transactions of fund recipients. *Id.* § 5504(g).

Pursuant to the statute, the Secretary of HUD has issued extensive regulations governing Community Development Block grants. 24 C.F.R. Part 570 (1981). These regulations govern in detail grant procedures, as well as program design, management, and administration. Specifically, section 570.204 governs eligible activities by private non-profit entities such as UNI. 24 C.F.R. § 570.204 (1981). Section 570.507 provides that OMB Circular No. A-102 governs the procurement of materials and services funded under the program and procured by subgrantees and subrecipients. *Id.* § 570.507. Section 570.509 reserves to the Secretary a right of access to all books, accounts, records, reports, files and other papers or property of subgrantees for the purpose of making surveys, audits, examinations, excerpts, and transcripts. *Id.* § 570.509. Section 570.900 sets forth the performance standards by which all recipients of funds are to be evaluated by the Secretary, the reports to be submitted by recipients, and the records to be maintained by recipients. *Id.* § 570.900-.913.

Although the purpose of the Act was, in part, to allow flexibility to local units in administering the grants, the legislative history demonstrates that the Act was primarily intended to improve federal supervision over federal housing and urban development programs. Senate Report No. 93-693 notes that the consolidation of community development programs was designed to produce a single, more comprehensive community development program "primarily to insure that Federal funds would be used with a priority" to meet the objectives of the Act. *S. Rep. No.* 93-693, 93d Cong., 2d Sess. 2, *reprinted in* 1974 *U.S. Code Cong. & Ad. News* 4273, 4274. Under the Community Development Block Grant program, as under the CETA program in *Mosley*, the federal funds flow from the local sponsor to the recipient of a contract rather than directly from the agency. Nevertheless, it is clear from the legislative history of the Act, as it was in the legislative history of CETA, that the purpose of this procedure was to streamline the funding process rather than to abdicate federal control over the substantive aspects of the program. Thus, the statute, regulations, and legislative history manifest Congress' intent to promote efficient, effective federal supervision over the Community Development Block Grant program. The extent of federal involvement is such that Dixson and Hinton were acting on behalf of the United States in their administration of the federal funds under the program.

Analysis of Dixson's and Hinton's positions within the program buttresses our conclusion that they were "public officials" within the meaning of § 201(a). The salaries of each and the entire cost of the program they administered were funded by the federal government for federal objectives. Their employment by the state does not preclude a determination that they were acting on behalf of the United States. *See, e.g., United States v. Mosley*, 659 F.2d 812 (7th Cir. 1981); *United States v. Kirby*, 587 F.2d 876 (7th Cir. 1978); *United States v. Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976); *United States v. Gallegos*, 510 F. Supp. 1112 (D.N.M. 1981). Dixson, as Executive Director of UNI, and Hinton, as UNI's Housing Rehabilitation Coordinator, were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds. In light of the broad interpretation to be accorded section 201, *United States v. Mosley*, 659 F.2d at 816, we conclude that Dixson and Hinton were acting on behalf of the United States and, therefore, were "public officials."

The appellants attach significance to testimony that only the Housing Committee could award contracts. However, there was also evidence Dixson and Hinton had awarded contracts without the approval of the Housing Committee. Indeed, apparently neither in dealing with the contractors displayed any aspect of hypobulia. Viewing the evidence in the light most favorable to the Government, *Glasser v. United States*, 315 U.S. 60, 80 (1942), the contractors favored by the appellants were successful in their bids, so that Dixson and Hinton were in effect authorizing the expenditure of federal funds themselves. Even if they had not been able to award contracts on their own, we question whether the requirement of Housing Committee approval alone would so attenuate the appellants' authority to administer federal funds as to preclude their status as public officials. *See United States v. Mosley*, 659 F.2d at 816.

The authority of the appellants in relation to the federal government is closely analogous to the authority of the defendant in *United States v. Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976), and the appellants' attempts to distinguish that case are unpersuasive. In *Griffin*, the defendant was the principal officer and agent of a corporation awarded an area management broker contract by HUD. The corporation was responsible for soliciting competitive bids on housing contracts under a federal program. The corporation then submitted the three lowest bids to HUD with a recommendation that the lowest bid be accepted. Ordinarily the lowest bidder was awarded the contract if the bid met the federal criteria and estimate set by the area broker. The corporation received payment from HUD for each contract issued. As in the instant case, the defendant in *Griffin* solicited a 10% kickback for his favoritism in accepting bids although he alone did not have technical authority to award contracts. As the district court stated in finding the defendant Griffin, as well as the corporation, to be persons "acting for or on behalf of the United States":

> While the low bidder among those from which the area broker solicited bids was not guaranteed of being awarded the contract by HUD, testimony was presented that such low bidder was in fact awarded the job at least 95% of the time. Thus the Court feels that the defendants were placed in a position of responsibility and were enabled to exercise discretion to act for and on behalf of HUD in operating the system to provide for the rehabilitation of HUD properties. The mere fact that defendant Jack Griffin, as President of MMC, is an em-

> ployee of the corporation and not of the United States does not prevent him from acting as a "public official" as defined in 18 U.S.C. § 201(a).

401 F. Supp. at 1230. Similarly, Dixson and Hinton had the authority and power to influence or control the dispersal of federal funds on behalf of HUD.[7] Accordingly, Hinton and Dixson qualify as "public officials" within the meaning of section 201(c).[8]

II. Sufficiency of the Evidence as to Hinton

Hinton's remaining objections on appeal may be briefly addressed. Hinton claims that he was entitled to acquittal because there was insufficient evidence on all relevant counts for the jury to find that Hinton awarded any contracts, or that he accepted or solicited a bribe from Gerald Lilly as alleged in Count X of the indictment. Both objections are without merit.

On appeal the evidence must be viewed in the light most favorable to the Government, together with all reasonable inferences. As previously pointed out, the testimony of Ora Logsdon was that he had been awarded contracts which, according to other witnesses' testimony, had not been awarded by the Housing Committee. Logsdon testified that he had been awarded ten contracts, and that Hinton and Dixson had agreed to award him all the contracts he could handle if he paid them kickbacks. Oscar Penn, a member of the Housing Committee, testified that housing rehabilitation contracts were awarded that had not been approved by the Committee. As to Count X of the indictment,[4] there was testimony that Hinton, with assistance from Dixson, told Lilly on which houses to bid, that one bid had to be lower than he had originally made it, and that the bids were simply a formality. Lilly went to UNI's office with $2,000.00 from his first check from UNI, and paid the money to Dixson who was in the office at that time. This evidence, and the inferences which can be drawn therefrom, were sufficient to sustain the jury verdict as to Hinton on all counts.

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[7] In emphasizing the extent to which contracts were actually awarded based on Hinton's and Dixson's actions, we do not intend to suggest that the solicitation of a bribe actually had to have resulted in the award of a contract for a violation of section 201 to have occurred. *E.g., United States v. Arroyo*, 581 F.2d 649, 654 n.10 (7th Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979). The frequency with which the appellants effectuated the solicited result relates to their control and discretion over the funds and, thus, to the issue of whether they were acting on behalf of the United States in their positions.

[8] We attach no significance to the testimony of James Barnes, program manager of the Chicago area office of HUD, that he was not specifically aware of UNI and was not required to be aware of its existence. Mr. Barnes' personal knowledge of a specific subgrantee in a regional area is of little probative value in assessing the pervasiveness of federal regulation of the program.

III. The Cross-Examination of Ora Logsdon

Hinton objects to the district court's refusal to allow him cross-examination of Logsdon for impeachment purposes based on Logsdon's purported misappropriation of certain UNI funds. Generally a trial court has wide discretion to limit cross-examination, with the standard on review for the adequacy of cross-examination on bias or motive being whether the jury had sufficient information to make a discriminating appraisal of the witness's bias or motive. *United States v. Fitzgerald*, 579 F.2d 1014 (7th Cir.), *cert. denied*, 439 U.S. 1002 (1978).

Logsdon admitted to bribing Hinton and Dixson. He was questioned in cross-examination about law enforcement officers having sought him out for information, about denying any involvement in the bribery to the officers, about his first interview by law enforcement officials in his attorney's office, and about owing money to the Government for unpaid taxes. The cross-examination made it clear that Logsdon was a party to the illegal transaction and that he had been sought out by law enforcement officials. This cross-examination was sufficient to allow the jury to assess adequately Logsdon's bias or motive so that the district court's limitation on further cross-examination was not an abuse of discretion.

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[4] Count X alone was predicated on 18 U.S.C. § 201(c)(1) *and* (2). Section 201(c)(2) prohibits a public official from, directly or indirectly, asking, demanding, exacting, soliciting, seeking, accepting, receiving or agreeing to receive anything of value in return for being influenced to commit *or aid in committing*, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States. 18 U.S.C. § 201(c)(2) (1976) (emphasis added).

Finally, Hinton appears to suggest that the indictment was defective because it failed to allege how Hinton was acting for or on behalf of the United States. However, each count of the indictment alleged that Hinton and Dixson, as employees of UNI, were involved in accepting bids and awarding and administering contracts between UNI and contractors for the rehabilitation of housing under grant funds from HUD, a department of the Government of the United States, to the city of Peoria, pursuant to a contract between UNI and the city. These allegations of the indictment were clearly sufficient to apprise Hinton of the nature and elements of the charge as set forth in *Hamling v. United States*, 418 U.S. 87, 117 (1974).

For the reasons stated herein the judgment of the district court is as to both appellants on all counts

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

USCA 5730—Midwest Law Printing Co., Inc., Chicago—7-8-82—400

Opinion by Judge Pell

JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinos 60604

July 8, 19 82

Before

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. THOMAS E. FAIRCHILD, Senior Circuit Judge

Hon. JESSE E. ESCHBACH, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2206 and 81-2207 vs.

JAMES LEE HINTON and ARTHUR DIXSON,
Defendants-Appellants.

Appeals from the United States District Court for the Central District of Illinois, Peoria Division.
No. 81-CR-10007
Robert D. Morgan, Judge

This cause was heard on the record from the United States District Court for the Central District of Illinois, Peoria Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED as to both appellants on all counts, in accordance with the opinion of this Court filed this date.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

RECEIVED

AUG 24 1982

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 82-5279

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

MOTION TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Rule 46 of this Court, I, Donald V. Morano, move for leave to proceed *in forma pauperis* as counsel for Arthur Dixson in his petition for a writ of certiorari. I have attached a photostatic copy of my appointment as counsel for petitioner in his appeal before the Seventh Circuit Court of Appeals.

Donald V. Morano
Donald V. Morano
Attorney for Petitioner
Arthur Dixson

1231 Jarvis Avenue
Chicago, Illinois 60626
(312) 761-6201

RECEIVED
AUG 24 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

82-5279

AFFIDAVIT OF SERVICE

TO: Solicitor General
Department of Justice
Washington, D.C. 20530

I, Donald V. Morano, being duly sworn on oath, depose and state that I served the foregoing Petition for a Writ of Certiorari, in accordance with Rule 28(c), to the above-mentioned individual at his respective address by depositing in the United States mail at 55 East Monroe Street, Chicago, Illinois, 60603, a true and correct copy thereof in a sealed envelope, postage prepaid, on the 20th day of August, 1982.

Donald V. Morano

Subscribed and sworn to
before me this 20th day
of August, 1982.

Barbara M. Bost
Notary Public

CJA 20 Appointment & Voucher for Counseling Services 21*4 Approved by U.S. Treasury – A...

APPOINTMENT AND AUTHORITY TO PAY DE... ...OUNSEL

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☒ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON

FOR SEVENTH CIRCUIT

AT CHICAGO, ILLINOIS

LOCATION NUMBER 13001

DOCKET NUMBERS

Magistrate

District Court 81-CR-10007

Court of Appeals 81-2207

VOUCHER NUMBER 509616

PROCEEDING (describe briefly) Appeal

CHARGE/OFFENSE (describe if applicable & check box →) ☒ Felony ☐ Misdemeanor

Title 18:201(c), Bribery

U.S. or other code citation ▶

PERSON REPRESENTED (Show full name & status, & check box →)

Name already appears as ☐ Pl or as ☒ Df above

1 ☐ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☒ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization printed here and below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate

08-06-81
Date

OR BY ORDER OF THE COURT
(Clerk or Deputy)

FOR SERVICES & EXPENSES VOUCHERED BELOW

* TIME SPENT	DATES	HOURS	AMOU...
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			$
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS			▶ $
II OUT OF COURT			
A. INTERVIEWS & CONFERENCES			
B. OBTAINING & REVIEWING RECORDS			$
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only)			
(1) TO & FROM COURT (round trips under 1 hr not allowed)			
(2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS			▶ $
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			▶ $

III. ITEMIZED EXPENSES (Specify, per instruction sheet) AMT PER ITEM $

TOTAL ITEMIZED EXPENSES ▶ $

TOTAL COMPENSATION & EXPENSES ▶ $

DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE

NET AMOUNT CLAIMED ▶ $

* If more space is needed use additional blank sheets

CERTIFICATIONS OF ATTORNEY/PAYEE

Has compensation and/or reimbursement for work in this case been previously applied for or received? ___ Yes ___ No

If "Yes", how much were you paid? $ ______

By whom were you paid?

[illegible] did you represent [illegible] ___ Yes ___ No

SIGNATURE OF ATTORNEY/PAYEE I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS ▶ DATE

AMOUNT CERTIF... APPRO...

APPROVED [illegible] SIGNATURE OF JUDGE/MAGISTRATE ▶ DATE $

PAYMENT [illegible] SIGNATURE OF CHIEF JUDGE COURT OF APPEALS ▶ Payment in excess of statutory limitation approved under 18 USC 3006A(d)(2). AMT APPR... DATE $

COUNSEL X IS A PRIVATE ATTORNEY
IS FURNISHED BY:
___ COMMUNITY DEFENDER ORGANIZATION
___ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. 312/427-2737

SOCIAL SECURITY NO. 028-26-7557

VOUCHER NUMBER ▶ 509616

Has defendant paid any money to you since his arrest, or to your knowledge, to anyone else, in connection with the offense for which you were appointed to defend him? If so, give details.

ATTORNEY
ORGANIZATION
ADDRESS

Mr. Donald McGrano
John Marshall Law School
315 South Plymouth Court
Chicago, IL
60604
ZIP CODE

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Office-Supreme Court, U.S.
FILED
JAN 27 1983
ALEXANDER L. STEVAS,
CLERK

Nos. 82-5279 and 82-5331

In the Supreme Court of the United States

OCTOBER TERM, 1982

ARTHUR DIXSON, PETITIONER
v.
UNITED STATES OF AMERICA

JAMES LEE HINTON, PETITIONER
v.
UNITED STATES OF AMERICA

*ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT*

JOINT APPENDIX

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Counsel for Respondent

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UNITED STATES OF AMERICA
v.
ARTHUR DIXSON AND JAMES LEE HINTON
CRIMINAL NO. 81-10007
United States District Court for the Central District of Illinois, Peoria Division, Judge Robert D. Morgan, District Judge

Date	Document No.	Proceedings
3/12/81	1. BOTH	Indictment returned.
4/17/81	21. HINTON	Motion to Dismiss filed with Memorandum.
4/21/81	24. DIXSON	Motion to Dismiss filed.
4/27/81	27. BOTH	Response to Defendants' Motions to Dismiss filed by U.S.A. with Memorandum.
6/10/81	44. HINTON	Motion in Arrest of Judgment filed by Defendant.
6/10/81	45. HINTON	Motion for New Trial filed by Defendant.
6/10/81	46. DIXSON	Motion in Arrest of Judgment and for a new trial filed by defendant.
7/17/81	50. DIXSON	Parties pre. in o/c w/c for sentencing. Hearing on MO for new trial. MO DENIED. Court affords deft. and his atty an opportunity to comment on the present. report, & to make statement in mitigation of punishment. Neither does. ORDERED by the Court that deft. is committed to the custody of the Atty. Gen. for imprisonment for a period of seven & one-half (7-½) yrs. as to counts 1 thru 7. Said Sentences to run concurrently. Imposition of any other sent. to imprisonment is suspended as to Counts 10 & 11 & the deft. is placed on prob. for a period of three (3) yrs. on ea. count to run concurrently. Said probation period to commence on termination of supervision on any parole on the sent. imposed herein. SPECIAL CONDITIONS of prob. is that the deft. maintain employment & contribute to the support of his dependents. Further ORDERED that execution of sent. is suspended pending appeal. (See Judgment & Commitment) copies dist. to AUSA, Marshall & Probation. Deft. advised by the Court of his constitutional right to appeal. ORDERED that existing bond remain in full force & effect.

Date	Document No.	Proceedings
7/17/81	51. HINTON	Parties pres. in o/c w/c for sentencing. Hearing on MO for new trial & arrest of Judgment, MO DENIED. Court affords deft. & his Atty. an opportunity to comment on the pre-sent. report, & to make statement in mitigation of punishment. Neither does. ORDERED by the Court that deft. is committed to the custody of the Atty. Gen. for imprisonment for a period of seven and one-half (7-½) yrs. as to Counts 1 thru 6. Said sentence to run concurrently. Imposition of any other sentence to imprisonment is suspended as to Counts 8 thru 11 and deft. is placed on prob. for a period of three (3) yrs. on ea. count to run concurrently. Said prob. commence on termination of supervision in any parole on the sentence imposed herein. SPECIAL CONDITIONS of prob. is that the deft. maintain employment & contribute to the support of his dependents. FURTHER ORDERED that execution of sent. is suspended pending appeal (See Judgment & Commitment) copies dist. to AUSA, Marshall & Probation. Deft. advised by the Court of his constitutional right to appeal. ORDERED that existing bond remain in full force & effect.

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ARTHUR DIXSON AND JAMES LEE HINTON, DEFENDANTS.

CRIMINAL NO. 81-10007

Vio: Title 18, Section 201, United States Code.

INDICTMENT—Filed March 12, 1981

The Grand Jury Charges:

COUNT I

1. That from October 1, 1979, through and including May 1, 1980, in the Central District of Illinois and within the jurisdiction of this Court, Arthur Dixson was employed and functioning as the Executive Director of United Neighborhoods, Incorporated.

2. That from October 1, 1979, through and including May 1, 1980, in the Central District of Illinois and within the jurisdiction of this Court, James Lee Hinton was employed and functioning as a Housing Rehabilitation Coordinator for United Neighborhoods, Incorporated.

3. That United Neighborhoods, Incorporated, during all times in issue was a corporation with its principal place of business located at 219 South Saratoga, Peoria, Illinois.

4. That at all times in issue, the City of Peoria, Illinois, was the recipient of funds from the United States Department of Housing and Urban Development, a Department of the Government of the United States of America.

5. That said funds referred to in paragraph 4 consisted of $400,000.00 via a Community Development Block Grant, and $638,000.00 via Federal Metro-Reallocation Grants.

6. That at all times in question, United Neighborhoods, Incorporated, was under contract with the City of Peoria, Illinois, to administer the above grants.

7. That as employees of United Neighborhoods, Incorporated, (UNI), Arthur Dixson and James Lee Hinton were involved in accepting bids and awarding and administering contracts between UNI and general housing contractors for the rehabilitation of housing covered by the grants referred to in paragraphs 4 and 5.

8. That on or about the 22nd day of October, 1979, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $3,471.58 in United States currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT II

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 26th day of October, 1979, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $3,000.00, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT III

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 1st day of November, 1979, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $5,211.96, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT IV

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 2nd day of November, 1979, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $3,926.00, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT V

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 19th day of November, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand,

exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $5,335.00, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT VI

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 23rd day of November, 1979, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $1,121.71, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT VII

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 27th day of November, 1979, Arthur Dixson, being a "public official" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $8,000.00, in United States Currency, in return for said Arthur Dixson's being influenced in his performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT VIII

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 21st day of December, 1979, James Lee Hinton, being a "public official" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $6,000.00, in United States Currency, in return for said James Lee Hinton's being influenced in his performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT IX

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 19th day of February, 1980, James Lee Hinton, being a "public official" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $2,000.00, in United States Currency, in return for said James Lee Hinton's being influenced in his performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

COUNT X

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 12th day of March, 1980, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit seek, accept, receive, and agree to receive from Gerald Lee Lilly, a thing of value, to wit: $2,000.00, in

United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Sections 201(c)(1) and 2.

COUNT XI

1-7 Paragraphs 1 through 7 of Count I of this Indictment are hereby realleged and incorporated by reference as fully set forth herein.

8. That on or about the 26th day of March, 1980, Arthur Dixson and James Lee Hinton, being "public officials" within the meaning of Section 201(a) of Title 18, United States Code, corruptly did, directly and indirectly, ask, demand, exact, solicit, seek, accept, receive, and agree to receive from Ora Logsdon, a thing of value, to wit: $2,627.80, in United States Currency, in return for said Arthur Dixson's and James Lee Hinton's being influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1).

A True Bill.

CHARLES E. HIPPLES
Foreman

GERALD D. FINES
United States Attorney

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES HINTON, ET. AL., DEFENDANT.

Crim. No.: 81-10007

MOTION TO DISMISS—Filed April 17, 1981

James Hinton, defendant, by his attorney, RICHARD D. TRAINOR, moves the Court pursuant to Rule 12b of the Federal Rules of Criminal Procedure for an order dismissing the Indictment, on the following grounds:

1. The Indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof.

This motion is based on the files and records of this case and the Memorandum attached hereto and filed herewith.

JAMES HINTON
BY: RICHARD D. TRAINOR
QUINLIVAN & TRAINOR,
his attorneys

DATED: April 15, 1981

QUINLIVAN & TRAINOR
Attorneys for the Defendant
221 North LaSalle Street—Suite 1812
Chicago, Illinois 60601
Phone: (312) 346-5180

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES HINTON, ET. AL., DEFENDANT.

CRIM. NO.: 81-10007

MEMORANDUM—Filed April 17, 1981

Facts:

At all times in issue the City of Peoria, Illinois was the recipient of funds from the United States Department of Housing and Urban Development. United Neighborhoods, Inc. was a community organization located in Peoria, Illinois. United Neighborhoods, Inc. was selected by the City of Peoria to administer the above grants. In turn, United Neighborhoods, Inc. entered into contracts with individual housing contractors for the rehabilitation of housing. The contractors were paid with the above mentioned Federal funds. James Hinton, the defendant, was an employee of United Neighborhoods, Inc. with the title of Housing Rehabilitation Coordinator. His duties included accepting bids and awarding contracts. He is charged with violating 18 USC 201(c).

The issue raised by this motion is whether James Hinton is a public official within the meaning of 18 USC 201.

Defendant is charged with violating 18 USC 201(c). That section provides that a public official or a person selected to be a public official who corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or any other person in return for being influenced in his performance of any official act is subject to fine and imprisonment.

"Public official" is defined in Section 201(a) in pertinent part as an—

> "officer or employee or person acting for or on behalf of the United States or any department, agency, or

> branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government."

For the purpose of deciding of person's status as a "public official" under 18 USC 201, it is not the aspects of the particular project which are of greatest significance, but the character and attributes of the person's employment relationship, if any, with the Federal Government, *United States vs. Loschiavo*, 531 F2d, 659 (1976).

In the present case, James Hinton had no employment relationship whatsoever with the Federal Government. He was hired by United Neighborhoods, Inc. He was paid by that organization and answerable to its board of directors. As alleged in the Indictment, James Hinton was involved in accepting bids and administering contracts between United Neighborhoods, Inc. and the individual housing contractors. He was acting on behalf of that organization, not the City of Peoria or Department of Housing and Urban Development.

Further support for defendant's position is found in the case of *United States v. Del Toro*, 513 F.2d 656 (1975). In *Del Toro*, the Court of Appeals for the Second Circuit held that defendant, an Assistant Administrator of a model cities program, who was a city employee, was not a public official for purposes of 18 USC 201 even though the Federal Government provided 100% of the cost of the model cities program and 80% of its salaries and even though the Department of Housing and Urban Development supervised activities to some extent. In reaching its holding, the Court placed emphasis on the modifying phrase in 201(a), "under or by authority of any such department, agency, or branch of government." The fact that Federal funds were involved was not controlling. Likewise, in the present case, the Court should look to whether James Hinton was acting "under, or by authority of any such department, agency, or branch of government." In short, the definition of "public official" as contained in § 201(a) should be construed as a whole.

James Hinton, as an employee of United Neighborhoods, Inc., was acting under authority of that organization in dealing with the individual contractors. He was answerable to the Board of Directors of United Development, Inc. He had no dealings with the Department of Housing and Urban Development and it can not be said that he was acting under or by the authority of that agency.

The fact that Federal funds were involved should not by itself serve to confer jurisdiction of this case. That fact does not make James Hinton a "public official" for purposes of 18 USC 201. A reading of the statute does not disclose an apparent Congressional intent to include individuals such as James Hinton within the ambit of 18USC 201. Ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity, *Rewis vs. United States*, 401 US 808, 812, 91 S.Ct. 1056, 1059, 28 LEd2 493 (1971).

In conclusion, it is submitted that James Hinton was not a public official within meaning of 18 USC 201 (a). Therefore, the Indictment should be dismissed.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

No. 81-10007

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ARTHUR DIXSON, ET AL., DEFENDANTS

MOTION TO DISMISS—Filed April 21, 1981

NOW comes the Defendant, ARTHUR DIXON, by Emmett W. Lally, court-appointed counsel, and moves to dismiss the indictment against him and states:

1. Defendant JAMES HINTON previously filed a MOTION TO DISMISS the indictment against him alleging that he is not a "public official" under the provisions of 18 USC 201.
2. In support of his position HINTON has filed a memorandum citing the authority upon which he relies and outlining the rationale of his argument.
3. DIXSON, by this motion, joins in HINTON'S motion and incorporates by reference as though fully set out herein the same memorandum and its authority and rationale.

WHEREFORE, Defendant ARTHUR DIXSON prays that the court dismiss this cause now pending against him and that he go forth *sine die*.

Respectfully submitted,

ARTHUR DIXSON

BY: /S/ EMMETT W. LALLY

EMMETT W. LALLY, ATTORNEY AT LAW
2214 N. KNOXVILLE AVE., PEORIA, IL. 61603
309/688-2600

CERTIFICATE OF SERVICE (Omitted in printing)

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

No. 81-10007

UNITED STATES OF AMERICA PLAINTIFF,

v.

ARTHUR DIXSON AND JAMES LEE HINTON, DEFENDANTS

RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS—Filed April 27, 1981

Comes now the United States of America by Gerald D. Fines, United States Attorney, and Terry G. Harn, Assistant United States Attorney, for the Central District of Illinois, and states in response to defendant James Hinton's Motion to Dismiss and defendant Arthur Dixson's Motion to Dismiss the following:

1. That the Indictment does state such facts sufficient to constitute an offense against the United States and the laws thereof.

2. That the attached Memoranda of Law sets forth a valid legal basis for this Indictment.

THEREFORE, the United States of America respectfully prays that the Motions to Dismiss be denied.

UNITED STATES OF AMERICA

GERALD D. FINES
UNITED STATES ATTORNEY

/s/ TERRY G. HARN

TERRY G. HARN
ASSISTANT UNITED STATES ATTORNEY
271 Federal Building
100 N.E. Monroe Street
Peoria, Illinois 61650
Telephone: (309) 671-7050
(FTS) 360-7050

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

No. 81-10007

UNITED STATES OF AMERICA, PLAINTIFF,

v.

ARTHUR DIXSON AND JAMES LEE HINTON, DEFENDANTS.

MEMORANDA—Filed April 27, 1981

During the periods referred to in the Indictment, United Neighborhoods, Inc., was a sub-recipient of grant numbers from the Department of Housing and Urban Development. The purpose of the grant was to rehabilitate housing in a certain designated area of the City of Peoria.

The defendants Arthur Dixson and James Lee Hinton were employed by United Neighborhoods, Inc., to perform certain administerial functions with respect to this grant money within the guidelines established by the Department of Housing and Urban Development. Their duties included the accepting of bids and the awarding of contracts. While in performance of that duty, they received "kickbacks" or bribes from housing contractors. The purpose of the bribes was to influence the defendants' actions with respect to the awarding of contracts. The defendants were clearly public officials acting under authority from HUD. As outlined in the case of *United States* v. *Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), affirmed, 541 F.2d 284 (7th Cir.), an employee of a private corporation can be considered a public official where the duties he was performing were under authority granted to him by a federal agency. In the present case, a contractural relationship existed between United Neighborhoods, Inc., the City of Peoria, and the Department of Housing and Urban Development. Absent that relationship, the HUD money would never have been given to UNI. The authority to administer the money was the result of a contract. The activities in question involved the administering of those monies. Therefore, when administering these programs, the defendants were acting under authority granted to them by contract and were public officials.

UNITED STATES OF AMERICA

GERALD D. FINES
United States Attorney

/s/ Terry G. Harn
TERRY G. HARN
ASSISTANT UNITED STATES ATTORNEY
271 FEDERAL BUILDING
100 N. E. MONROE STREET
PEORIA, ILLINOIS 61650
TELEPHONE: (309) 671-7050
(FTS) 360-7050

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CRIMINAL NO. 81-10007

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES LEE HINTON, ET. AL., DEFENDANTS.

MOTION IN ARREST OF JUDGMENT—Filed June 10, 1981

The Defendant moves the court to arrest the judgment for the following reason:

1. The Indictment does not state facts sufficient to constitute an offense against the United States.

JAMES HINTON

By: /s/ RICHARD D. TRAINOR
QUINLIVAN & TRAINOR,
His attorneys.

Dated: June 8, 1981

QUINLIVAN & TRAINOR
ATTORNEYS FOR THE DEFENDANT
221 North LaSalle Street—Suite 1812
Chicago, Illinois 60601
Phone: (312) 346-5180

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CRIMINAL NO. 81-10007

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAMES LEE HINTON, ET. AL., DEFENDANTS

MOTION FOR NEW TRIAL—Filed June 10, 1981

The Defendant moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying Defendant's motion for acquittal made at the conclusion of the evidence.

2. The Court erred in sustaining objections to questions addressed to witness Ora Logsdon.

3. The Court erred in refusing to instruct the jury as requested by Defendant.

4. The Court erred in sustaining objections to questions addressed to witness Rodney Haynes.

5. The Court erred in refusing to grant a separate trial to Defendant.

6. The Court erred in refusing to allow a change of venue, due to prejudicial pre-trial publicity in the case.

7. The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: the attorney for the government was allowed to ask the Defendant if he knew of any reason why the government witnesses who had previously testified were lying. Requiring the Defendant to thus comment on the credibility and motives of the government witnesses deprived him of a fair trial.

8. The Defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstance; the attorney for the government made statements in his final arguments which were not based on the evidence.

9. The verdict is contrary to the weight of the evidence. The government did not prove Defendant guilty of each count in the Indictment beyond a reasonable doubt.

10. The court erred in not excusing potential jurors, Joseph Duffy and Bonnie Smith, for cause.

JAMES HINTON

By: /s/ RICHARD D. TRAINOR
QUINLIVAN & TRAINOR,
HIS ATTORNEYS,

DATED: JUNE 8, 1981

QUINLIVAN & TRAINOR
Attorneys for the Defendant
221 North LaSalle Street—Suite 1812
Chicago, Illinois 60601
Phone: (312) 346-5180

IN THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF ILLINOIS PEORIA DIVISION

No. 81-10007

UNITED STATES OF AMERICA, PLAINTIFF

v.

ARTHUR DIXSON, ET AL. DEFENDANT.

MOTIONS IN ARREST OF JUDGMENT AND FOR A NEW TRIAL—Filed June 10, 1981

(A)

NOW comes the Defendant ARTHUR DIXSON by his court-appointed counsel, Emmett W. Lally, and

IN SUPPORT of his MOTION IN ARREST OF JUDGMENT, states:

1. The indictment does not state facts sufficient to constitute an offense against the United States of America.
2. Defendant maintains, in particular, that he was not a public official as charged and at no time during the course of the trial did the government prove that he was a public official.

WHEREFORE, Defendant ARTHUR DIXSON prays that the court reconsider prior proceedings, including its denial of Defendant's MOTION FOR JUDGMENT OF ACQUITTAL, and grant this MOTION IN ARREST OF JUDGMENT, and declare the prior proceedings void and without effect.

(B)

IN SUPPORT of his MOTION FOR A NEW TRIAL, Defendant states:

1. The court erred in refusing to grant a separate trial to Defendant.
2. The court erred in refusing to allow a change of venue in this cause based upon the prejudicial pre-trial publicity generated by the news media.

3. The court erred in not excusing for cause jurors Duffy and Bonnie Smith.

4. The court erred in sustaining objections to defense question propounded to Henry Jackson concerning Jackson's prior criminal conviction.

5. The court erred in sustaining objections to defense questions addressed to the government's principal witness Ora Logsden.

6. The court erred in denying Defendant's motion for JUDGMENT OF ACQUITTAL at the close of the government's case and the renewed motion at the close of the case.

7. Defendant suffered prejudice in front of the jury by statements concerning the law made by the assistant U.S. attorney, which said statements invaded the province of the court vis-a-vis its responsibility of instructing the jury.

8. The court erred in refusing instructions tendered by Defendant.

9. The verdict is contrary to the weight of the evidence in that the government did not prove Defendant guilty beyond a reasonable doubt of each count in the indictment, particularly the charge that Defendant was a public official.

10. The foregoing allegations are made without the benefit of a written transcript. Defendant does not limit his motion to the grounds stated, nor does he waive any point of error, directly, indirectly, or by implication, but includes in this motion any and all errors committed at trial that will entitle him to relief, and includes those errors not brought to the attention of the court during trial, whether because of inadvertance or apparent oversight of counsel, because objection would have highlighted prejudice in the eyes of the jury, or otherwise.

WHEREFORE, Defendant ARTHUR DIXSON prays that the court grant his MOTION FOR A NEW TRIAL.

Respectfully submitted,

ARTHUR DIXSON

By: /s/ EMMETT W. LALLY

EMMETT W. LALLY, ATTORNEY
2214 N. Knoxville Ave.
Peoria, Ill. 61603 309/688-2600

PROOF OF SERVICE (omitted in printing)

AO 245
(5/75)

59

United Stat[illegible]

DEFEND[illegible]

[illegible]RTHUR DIXSON

United States District Court for

CENTRAL DISTRICT OF ILLINOIS

DOCKET NO. ▶ 81-10007-01

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR July 17, 1981

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Emmett W. Lally
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

FINDING & JUDGMENT

There being a XXXXX verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. on 6-3-81.

Defendant has been convicted as charged of the offense(s) of Bribery as charged in Indictment in Counts 1, 2, 3, 4, 5, 6, 7, 10, and 11; Title 18, Sec. 201(c)(1) U.S. Code.

FILED
JUL 17 1981
ROBERT J. KAUFFMAN, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Seven and one-half (7½) years as to Counts 1 thru 7. Said sentences to run concurrently. Imposition of any other sentence to imprisonment is suspended as to Counts 10 and 11 and the defendant is placed on probation for a period of three(3) years on each count to run concurrently. Said probation period to commence on termination of supervision on any parole on the sentence imposed herein.

SPECIAL CONDITIONS OF PROBATION

It is the order of the Court that the Defendant shall comply with the general and special conditions of probation as set out in Form #7 furnished by the Probation Officer and to the special terms outlined in the plan of the Probation Department.

Special Conditions of probation is that the Defendant maintain employment and contribute to the support of his dependents.

Further ordered that execution of sentence is suspended pending appeal.

No order on costs.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

ROBERT D. MORGAN

Date July 17, 1981

AO 245
(5/75)

United States of America vs.

United States District Court for

CENTRAL DISTRICT OF ILLINOIS

[illegible]ENDANT

JAMES LEE HINTON

DOCKET NO. 81-10007-02

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH July DAY 17, YEAR 1981

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Richard D. Trainor
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☒ NOT GUILTY

FINDING & JUDGMENT

There being xxxxxx verdict of
☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. on 6-3-81.

Defendant has been convicted as charged of the offense(s) of Bribery as charged in Indictment in Counts 1, 2, 3, 4, 5, 6, 8, 9, 10 & 11; Title 18, Sec. 201([illegible])(1) U.S. Code.

FILED
JUL 1 7 1981
ROBERT J. KAUFFMAN, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Seven and one-half (7½) years as to Counts 1 thru 6. Said sentences to run concurrently. Imposition of any other sentence to imprisonment is suspended as to Counts 8 thru 11 and defendant is placed on probation for a period of three (3) years on each count to run concrrently. Said probation to commence on termination of supervision on any parole on the sentence imposed herein.

It is the order of the Court that the Defendant shall comply with the general and special conditions of probation as set out in Form #7 furnished by the Probation Officer and to the special terms outlined in the plan of the Probation Department.

SPECIAL CONDITIONS OF PROBATION

Special conditions of probation is that the Defendant maintain employment and contribute to the support of his dependents.

It is further ordered that execution of sentence is suspended pending appeal.

No order on costs.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

ROBERT D. MORGAN

Date July 17, 1981

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DISTRICT OF ILLINOIS

CRIMINAL NO. 81-10007

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON AND JAMES LEE HINTON, DEFENDANTS.

EXCERPTS FROM JURY TRIAL—JUNE 2 and 3, 1981

BEFORE:
HON. ROBERT D. MORGAN,
DISTRICT JUDGE AND A JURY.

[108] JAMES BARNES

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARN:

Q Would you state your name and your occupation?

A James Barnes. I'm a program manager with the Chicago area office of the Department of Housing and Urban Development.

Q What is your present area of responsibility?

A As program manager I am responsible for managing the Community Development Block Grant Program in the Western part of the State of Illinois. I have a staff of five Community Development Representatives.

Q Was your department responsible for administering—excuse me—Community Block Grants in Metro and Reallocated Grants in the City of Peoria during 1979 and 1980?

[109] A Yes, it was.

Q What is a Community Development Block Grant?

A A Community Development Block Grant is a grant to cities and villages and counties to do various community development activities, such as acquisition of land for redevelopment, rehabilitation of residential structures, construction of streets, sanitary sewer, parks, senior citizen centers, other kinds of public work projects.

Q Can any of the money under this grant be used for administrative expenses?

A Yes, they can.

Q What is a Metro Reallocation Grant?

A The Reallocated Funds are those funds that are available to communities that have not been applied for. They are the same as Entitlement Funds. Community Development Program for large cities or communities over 50,000 population receive an entitlement based on a formula in the law, and as long as they apply to us they are entitled to a certain amount of money.

Metro Reallocated Funds are applied for under a separate provision but it is the same type of program. It is just extra money that wasn't [110] applied for.

Q During 1979, was the City of Peoria the recipient of a Community Development Block Grant Entitlement No. 79 MC 170019?

A Yes, it was.

Q And during 1979 was the City of Peoria the recipient of a Metro Reallocated Grant No. 78-BS 17909?

A Yes, it was.

Q Under both of these grants would the City be allowed to contract with a non-profit corporation?

MR. LALLY: Your Honor, I'm going to object, Mr. Harn is leading the witness. I really think that the witness should be testifying to these answers himself.

THE COURT: Well, I'm satisfied that it is purely preliminary. You can test his recollection on cross examination if you want to. Is there any question about this stuff?

MR. LALLY: No, if you're satisfied it's preliminary, I'm sure I will not quarrel with the Court.

THE COURT: Let's move along.

BY MR. HARN:

Q Under both of these grants would the city be allowed [111] to contract with a non-profit corporation to administer the funds?

A Yes, the city is allowed to do that.

Q Is there a guideline or regulation that governs this?

A The specific guidelines for the Block Grant Program cover all recipients including sub-grantees and subcontractors. There is also a specific regulation, an eligibility part of our regulations, that state that non-profit agencies can utilize the Block Grant Funds given to them by—allocated by cities.

Q Under these grants may the city or non-profit sub-grantee require a contractor rehabilitating covered housing to pay a fee to an individual as a condition for getting a contract?

A No.

MR. LALLY: I'm going to object.

THE COURT: Objection will be sustained to the form of the question.

BY MR. HARN:

Q Do these grants cover kickbacks at all?

MR. LALLY: I object to the qualification of that kind of a question. That is just out of line.

[112] THE COURT: Objection is overruled. He may answer if they cover it in any way.

A Could the question be repeated?

THE COURT: Read it, Mr. Reporter.

(Question read)

A No.

Q Are these grants covered by OMB Circular No. 102

A Yes.

Q What does Circular OMB-102 say on it?

A OMB, Circular 102 deals with the various requirements for contracts. Among other things, there are—there is language in that circular dealing with the Copeland Anti-Kickback Law prohibiting any kickbacks.

Q Does the Department of Housing and Urban Development require an accounting? If so, what kind of accounting for the money?

A The City and all sub-grantees are responsible to administer the program according to the rules and regulations of the Department and all the various rules that the U.S. Government has with regard to any kind of grants.

Q Do you know who the sub-grantee was on these two grants?

[113] A Not specifically. I couldn't tell you.

MR. HARN: Nothing further of this witness, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. LALLY:

Q I didn't get the description of your job. What is it? Is it a supervisory capacity?

A Yes, I'm a first-line supervisor.

Q Okay.

A Program manager.

Q Program manager for these various types of grants; is that correct?

A Uh-huh.

Q Did you yourself ever have any direct contact with this activity here in Peoria?

A No.

Q So you have never been down here in respect to the program as it was in operation; is that fair or not?

A I was down here approximately two years ago for some overall monitoring of the program.

Q What did that consist of?

A It consisted of discussions with the city about [114] the progress with some of the older programs in 1975, '76, and discussions about closing out those programs.

Q Okay. Now, you mentioned, I believe on direct examination, that you don't know or you didn't know to what group this money went to that we are talking about here today.

A I don't know the specific names. I can't recall specific names without—

Q Is it fair to say as well that you didn't really have anything to do with any of the people, the sub-grantees involved in this program?

A Not directly to those people.

Q Okay. As a supervisor or program director, would you have had any responsibility for overseeing the distribution of funds?

A Yes, overseeing the distribution of funds.

Q To whom?

A The city.

Q To the city?

A Yes.

Q Is that as far as it would go?

A No, we are responsible in making sure—

Q I don't mean "we," I mean—

[115] MR. HARN: Your Honor, I think the witness ought to be allowed to answer the question.

THE COURT: Yes, I think so, too, Mr. Lally.

A We are resonsible for overseeing the administration of the program and that includes—would include the overall administration.

We are responsible for making certain that a city undertakes audits of the program periodically at two years or less than the auditors are responsible for reviewing the city books and the books of any sub-grantee.

Q Well, with due respect, I interrupted you a moment ago and I didn't want to, but I only wanted to clarify when I said "you" I—

MR. HARN: Your Honor, can we spare the argument and just ask the question?

THE COURT: I think we will move along faster if we do that, Mr. Lally.

BY MR. LALLY:

Q Do you personally do any of that work?

A Sometimes, yes.

Q Did you personally in respect to this program?

A I'm not sure what you mean.

Q Study any of the reports or supervise any of the [116] money or examine any records?

A Yes.

MR. LALLY: I would have no further questions, your Honor.

MR. TRAINOR: A few, Judge.

THE COURT: All right.

CROSS EXAMINATION

BY MR. TRAINOR:

Q You testified on direct examination that it was your responsibility to oversee the entire program; is that correct?

A Yes.

Q All right, but according to you that didn't involve knowing who the sub-grantee was, did it?

A That is correct.

Q So you did not know that there was an organization in Peoria was given a million-dollars in federal funds, do you?

A That is incorrect.

Q Well, did you know the name of the organization?

A I don't know specifically the name of the organization involved.

Q Did you know the name when you were overseeing the program?

[117] A The application—no, I did not.

Q You did know that a million dollars was given the city in the form of Block Grants and Metro Relocation Funds, do you know that?

A Reallocated Funds, yes.

Q So you were aware of the amount?

A That is correct.

MR. TRAINOR: I have nothing further.

THE COURT: Anything further?

MR. HARN: No, your Honor.

THE COURT: You may step down, sir. Thank you.

(Witness excused)

RODNEY HAYNES

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARN:

Q Would you state your name, please, and your occupation?

A My name is Rodney D. Haynes, H-a-y-n-e-s, program manager for the City of Peoria, Department of Community Development.

THE COURT: Pardon me, sir. Please keep your voice up. Remember that the man at the far end of the [118] jury box needs to hear your answers.

THE WITNESS: Okay.

THE COURT: Keep in mind that you are not talking to me.

MR. LALLY: If I may add, with due respect, I might have a little difficulty as well. You've got to come this way, too.

BY MR. HARN:

Q Now, Mr. Haynes, in your capacity with the city do you oversee housing rehabilitation?

A Indirectly, yes, sir.

Q Particularly, Mr. Haynes, did you oversee the Federal Grants for Community Development Block Grants, No. 79 MC 170018?

A Yes, sir.

Q And Metro Reallocated Grant No. B-78-D-S-17909?

A Yes, sir.

Q Mr. Haynes, did the City, its personnel, administer the grant monies and issue the contracts for the houses in question?

A No, sir, we did not.

Q How was that accomplished?

A It was accomplished through a mechanism where the City entered into an agreement with United [119] Neighborhoods, Incorporated, to provide rehabilitation services to the houses in question.

[123] BY MR. HARN:

Q Now, Mr. Haynes, the two grants in question were contracted to what agency for administration?

A United Neighborhoods, Incorporated.

Q What is United Neighborhoods, Incorporated?

A It is a non-profit community based organization.

Q What was the purpose of the grant money?

A The purpose?

Q The program.

Q The purpose of the grant money given to United Neighborhoods was to provide loan grant assistance to homeowners in the center southside neighborhood City of Peoria.

Q Did the city exercise any supervision over this program?

[124] A Yes, sir.

Q What did that supervision consist of?

A The supervision consisted of a report back from members of United Neighborhoods as well as technical assistance in providing rehabilitation assistance.

Q Now, Mr. Haynes, Government's Exhibit No. 21 is what?

A These are cancelled checks from the City of Peoria to United Neighborhoods, Incorporated, for compliance with terms of our agreement.

Q Government's Exhibit No. 20, what is that?

A These are receipts for these cancelled checks plus some vouchers.

Q What do those represent, Mr. Haynes?

A This represents payment to United Neighborhoods as per their contract agreements for work done on the homes in question.

Q I show you one of the contracts—if I may have those back—one of those contracts, Government's Exhibit No. 25, in the middle part of that document on Page 2, will you read that sentence for us, please?

A All contracts for construction or repairs shall include a provision for compliance with Copeland Anti-Kickback Act, 18 U.S.C. 874, as supplemented [125] by Department of Labor Relations, 29 CFR, Part 3."

Q Is this signed by anybody?

A It is signed by Helen Chandler, attested by Shirley Johnson.

Q Now, Mr. Haynes, I show you the top document of Government's Exhibit No. 20. Who are the signatories of that document?

A Signatories are Mr. Arthur Dixson and myself.

Q What is that document?

A This is a document acknowledging receipt of a check on March 21, 1979 in the amount of $15,375.

Q Where did the city get the money that was contracted out on these various contracts and the checks and vouchers that we have seen?

A It came from the U.S. Department of Housing and Urban Development under the Community Development Block Grant Program, the Metro Reallocated Program.

Q Did the city require U.N.I. to account for the money they spent?

A Yes.

Q Were you required to account to the Department of HUD for the expenditures of this money?

A Yes, sir.

Q Were audits conducted for that purpose?

A Yes, sir.

[126] Q Government's Exhibit No. 12 is one such audit, isn't it? It is the brown-covered document.

A The Arthur Anderson?

Q Yes. Would you like to see it?

A No.

MR. HARN: No further questions of the witness, your Honor.

CROSS EXAMINATION

BY MR. LALLY:

Q Mr. Haynes, did you work directly with U.N.I. on this program in any fashion?

A Yes, sir.

Q Could you describe that for us?

A My job with the United Neighborhoods was basically to provide the liaison with HUD as well as to make sure that their payments were received after they requested payment.

Q Whose payment?

A That United Neighborhoods. I made a check payable to the United Neighborhoods.

Q And these checks, these receipts that we have here, this stack of eight and a half by eleven contains receipts by persons of various names, do they not?

A Yes, sir.

[127] Q So these were simply receipts for money paid by the city to U.N.I.?

A Yes, sir.

Q They were not payable to any particular individual?

A Correct, the checks were made payable to the organization.

Q So the signature on here does not mean that is the person to whom the check was made as the recipient of the money?

A That is correct.

Q In your capacity as—if I may use the word you used —"liaison officer," did you have occasion to inspect any books? Was that your normal job?

A No, that was not my normal job.

Q Was it your normal job to look into the disbursement of funds by U.N.I. normally?

A No.

Q Okay, you recognize the name Helen Chandler?

A Yes, sir.

Q Tell us who Helen Chandler was.

A Helen Chandler was and I believe is still the Chairperson of United Neighborhoods, Incorporated. Board of Governors.

Q Are you familiar with the makeup of U.N.I. as [128] far as its Governing Board is concerned?

A Vaguely.

Q In your capacity as Liaison Officer do you know how the contracts for these rehabilitation projects were let or allowed?

A I don't have very detailed knowledge of that.

Q So that is it safe to say that essentially your activities were to disburse the funds and receive receipts back and keep in touch informally with them or—

A I believe that is a fair assessment.

MR. LALLY: I have nothing further.

CROSS EXAMINATION

BY MR. TRAINOR:

Q Mr. Haynes, I believe you testified on direct that the money was given by the Department of Housing and Urban Development to the City of Peoria; is that correct?

A Yes, sir.

Q And then this money was routed to the sub-grantee which was U.N.I.; is that correct?

A Yes, sir.

Q And you identified a number of receipts that Mr. [129] Harn showed you and also a number of contracts between the City of Peoria and U.N.I.; is that correct?

A Yes, sir.

Q Would it be fair to say that the City of Peoria directed approximately one-million one-hundred-thousand dollars to United Neighborhoods during the period in question?

A On the exact dollar amount I'm not sure, but that sounds close.

MR. HARN: Your Honor, we will stipulate the amount of money that went from the City of Peoria to United Neighborhoods, if that is helpful.

THE COURT: Is that the amount that counsel stated?

BY MR. TRAINOR:

Q Does that amount seem to be a fair approximation?

A Seems very close.

Q Okay. It's a lot of money, is that correct?

A Yes, sir.

Q So the city would naturally have a great stake in keeping track of those funds, would it not?

A Yes, sir.

Q And the city naturally would want the funds to be administered in a professional, proper manner; is that correct?

[130] A Yes, sir.

Q Are you familiar with the people on U.N.I. Board of Directors?

A Some of them I am sure I am.

Q Well, who are you familiar with on U.N.I. Board of Directors?

A I don't know who currently is on the Board.

Q At the time in question, sir, did you know who was on the Board?

A Knew some of the members, yes, sir.

Q Who did you know?

A Helen Chandler, Linda Powell, lady named Mrs. Stewart, I believe, Bertha Peters. That's about most of the names that ring a bell.

* * * * *

[229] HELEN CHANDLER

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARN:

Q Would you state your name, please, and your address?

A Helen Chandler, 1514 West Smith.

Q Is it Miss or Missus?

A Miss.

Q Would you keep your voice up because we seem to be having trouble hearing in here? The acoustics are a little bad.

Miss Chandler, what is your position with United Neighborhoods, Inc.?

A I am Chairman of the Board.

Q And as Chairman of the Board, were you Chairman of the Board during 1979 and 1980 also?

A Yes.

Q Were you Chairman of the Board when Arthur Dixson and James Hinton were hired?

A Yes.

Q And were you also Chairman of the Board when the contracts were entered into with the City of Peoria for the Housing Rehab Program?

A Yes.

[230] Q Prior to the time that you got the money from the city for these housing programs, was U.N.I. conducting housing rehab on its own?

A No.

Q Well, before getting the federal money were you doing any housing rehabilitation on your own?

A Before getting the money?

Q Yes.

A No.

Q Did you have any money for that purpose?

A We got the money from the city for the rehab—to do the rehab.

Q Housing and Urban Development money?

A Yes.

Q Was U.N.I. in the business of rehabilitating houses before you got the money from the city?

A Let me think. That was one of our goals was to rehabilitate the houses.

Q But did you, in fact, do that before you got the money from the city?

A No, we didn't have any money to do that.

Q Were there procedures set for the awarding of contracts for the rehabilitation of houses?

A Yes.

[231] Q Who was to award the contracts for the rehabilitation of houses from U.N.I.?

A The Housing Committee.

Q Did any of the staff employees have the authority to approving the housing rehab contracts?

A No.

Q Did Mr. Dixson or Mr. Hinton have the authority from U.N.I. to do that?

A Only if the Housing Committee told them to.

Q Was Oscar Penn a member of that Housing Committee?

A Yes, he was.

Q Miss Chandler, from time to time did you take part in the Housing Committee meetings?

A Occasionally, yes.

Q Do you recall any contracts that were made with contractors that were not approved by the Housing Committee but for which U.N.I. money was spent?

A All the contracts that were given out, I was told, was approved by the Housing Committee.

Q But you weren't always present for the meetings?

A No. I would just sit in. I didn't vote.

Q Who told you they were approved by the Housing Committee?

A Either the Housing Committee—well, when I would ask the Housing Committee or the staff.

[232] Q Or who?

A The staff.

Q You mean Mr. Dixson and Mr. Hinton?

A Yes.

Q Did you confront Mr. Hinton and Mr. Dixson about the large number of contracts that were received by Ora Logsdon?

A The Housing Committee asked about them, yes.

Q Do you recall during the summer of 1979 a debt consolidation loan that Arthur Dixson made to himself?

A Yes.

Q Was he required to pay that money back?

A Yes, he was supposed to pay it back, yes.

Q Was he supposed to pay it back before the end of 1979?

A He did pay it back.

Q Do you know how much that loan was for?

A I can't give you the exact figure, no.

MR. LALLY: Again with due respect, can you keep your voice up?

THE COURT: They need to hear you over at this table and the man and lady at the far end of the jury box need to hear your answers. Please keep your voice up as best you can.

[233] A I think it was either 5000. I think it was 5000 or a little more.

MR. HARN: No further questions of this witness, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. LALLY

Q I want to make sure. You say the loan was paid back; is that correct?

A Yes.

Q "Yes" it is correct? That is your answer?

A Right.

CROSS EXAMINATION

BY MR. TRAINOR:

Q Just a few questions. Miss Chandler, you were the Chairman of the Board of U.N.I.; is that correct?

A Right.

Q And you signed all the checks, didn't you?

A No.

Q Well, that was part of your job to sign the checks, wasn't it?

A I signed the checks only if three other people were not available to sign the checks.

Q Well, who had authority to sign the checks?

[234] A Oscar Penn, Lucille Steward, Bertha Peters and myself.

Q And to your knowledge those are the people that signed the checks?

A Right.

Q And you also recall as Chairwoman that you received approximately $1,100,000 from the City of Peoria?

A Right.

Q And you signed for that money, didn't you?

A Yes.

MR. TRAINOR: Nothing else.

RECROSS EXAMINATION

BY MR. LALLY:

Q Just one other question. It was possible for contracts to be allowed with Housing Committee permission?

A Pardon?

Q It was possible to have contracts allowed with Housing Committee permission?

A Yes.

MR. LALLY: Okay, thank you.

MR. HARN: No redirect, your Honor.

THE COURT: You may step down, ma'am. Thank you. (Witness excused)

* * * * *

EXCERPTS FROM JURY INSTRUCTIONS

[355] Section 201(c) of Title 18 of the United States Code provides in part that:

> "Whoever, being a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or [356] agrees to receive anything of value for himself in return for (1) being influenced in his performance of any official act shall be guilty of a crime against the United States."

Section 201 of Title 18 of the United States Code defines the term "public official" to include an officer or employee or person acting for or on behalf of the United States in any official function, under or by authority of any department, agency or branch of government.

Section 201 of Title 18 of the United States Code defines the term "official act" to mean any decision or action on any question, matter, proceeding or controversy which may at any time be pending or which may by law be brought before any public official in his official capacity.

Three essential elements are required to be proved in order to establish the offense charged in each count of the indictment:

First: The act or acts of directly or indirectly asking, demanding, exacting, soliciting, seeking, accepting, receiving or agreeing to receive from another a sum of money or thing of value, as charged in the indictment.

[357] Second: Doing such act or acts corruptly while a public official, and,

Third: Doing such act or acts with the intent to be influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts as charged.

GOVERNMENT EXHIBIT NO. 14
FOR THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF ILLINOIS
(6-2-81)

GRANT AGREEMENT

WITNESSETH, this agreement, executed on March 26, 1979, is made between the City of Peoria (City) pursuant to authority granted by City Council, and United Neighborhoods, Inc. (UNI), an Illinois not-for-profit corporation located at 219-221 South Saratoga, Peoria, Illinois, pursuant to authority granted by its Board of Governors;

WHEREAS, UNI was incorporated to provide various community services to communities within the City of Peoria;

AND, WHEREAS the services and programs developed, operated, and administered by UNI benefit the people of the City of Peoria;

AND, WHEREAS UNI provides needed services which might otherwise become direct or indirect obligations of the City of Peoria;

AND WHEREAS both the City and UNI desire that UNI continue to provide such programs and services;

NOW THEREFORE, it is agreed, pursuant to the terms and provisions of this agreement, that the parties hereto agree as follows;

Section 1—Grant

The City shall grant the amount of $61,500.00 to UNI. The sole use for said funds shall be to provide salaries and health insurance to the following employees:

a. Executive Director—$16,000 annually

b. Assistant Director for Program Development—$15,000 anually

c. Assistant Director of Community Development—$15,000 annually

d. Office Manager—$13,000 annually

Health Insurance is in the aggregate amount of $2,500.00.

It is agreed and understood that the $61,500 herein granted shall provide salaries for said employees for a term of one year from the date of said grant. The duties and obligations of each employee as set forth in Exhibit A attached hereto and made a part hereof.

Section 2—Records

UNI shall keep records sufficient to account for all monies received and expended pursuant to this agreement. These records shall be maintained according to accepted accounting practices and shall be available for inspection by the City upon request.

Section 3—Other Duties of UNI

UNI shall, during the twelve month period subsequent to the effective date of this Grant Agreement, develop, operate, and/or administer programs including but not necessarily limited to those set forth in Exhibit B attached hereto and made a part hereof. Twice during said twelve month period, the last coming at the end of said twelve month period, UNI shall submit written reports to the City setting forth in detail its efforts and results in relation to the duties set forth in this paragraph.

Section 4—Administrative Action

UNI hereby warrants that it, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply with all applicable provisions of Appendix F of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this agreement as if the words and terms thereof were set forth herein.

Section 5—Remedies

If UNI shall violate any term of this Grant Agreement, then the City, upon seven days within notice, shall be entitled to terminate this agreement. Said written notice shall set forth the date of termination. Upon such termination, all monies granted herein which are unexpended on the date notice is received shall be returned to the City. In the event, however, that it is determined that any of said monies granted herein which have been expended are willfully, intentionally, of fraudulently expended for purposes other than permitted in this grant agreement, UNI shall be liable to the City of Peoria for the amount of such monies up to $61,500. Unless otherwise limited by the terms of this agreement, City of Peoria shall have all other remedies provided to it by law and equity.

In witness whereof, the parties have caused their signatures to be affixed thereto thus making this grant agreement effective on the date herein before mentioned.

CITY OF PEORIA

By ______________________________
City Manager

UNI

By HELEN CHANDLER
Chairperson, Board of Governors

ATTEST:

SHIRLEY JOHNSON
Secretary

EXHIBIT A

EXECUTIVE DIRECTOR—$16,000

This position is directly responsible to the Executive Committee for all facets of the organization's operations. These responsibilities include, but are not limited to:

- —delegating responsibilities to staff and volunteers to ensure that the Board of Governors' directives, goals and objectives are carried out.
- —status reports of all programs and activities to Board of Governors.
- —development of progam planning and implementation.
- —development and maintenance of support from community residents, businesses, and other leaders to facilitate community development.
- —developing and maintaining cooperation with City staff and community residents in order to improve the community.
- —fiscal management and control.
- —administration of existing and new programs of UNI.
- —act in capacity of intermediary/contact person in dealing with all other organizations or agencies.
- —hiring, firing, and supervision of staff, with concurrence of Personnel Committee.
- —development of operational budget for Board of Governors' approval.
- —executing all legal contracts between UNI and other organizations.
- —development of financial resources for program operations.

ASSISTANT DIRECTOR FOR PROGRAM DEVELOPMENT—$15,000

The Assistant Director for Program Development works directly with the Management Committee of the Board of Governors. Responsibilities include, but are not limited to:

- —assisting executive director in planning and developing programs and services to UNI residents as directed by Board of Governors.
- —monitor and evaluate UNI programs and services.
- —train volunteers to perform organizational duties.
- —identify financial resources for program operations.
- —coordination of grant writing and application submittals.
- —supervision of program operations and staff.
- —development of fund raising techniques.
- —assisting Executive Director and Board of Governors as needed.

ASSISTANT DIRECTOR OF COMMUNITY DEVELOPMENT—$15,000

This position is directly responsible to the Executive Director. Responsibilities include, but are not limited to:

- —coordination and implementation of community organizing activities by the UNI.
- —direct outreach activities and facilitate communication between UNI and community residents.
- —direct and monitor a continuous and on-going community needs assessment of the social, economic and physical aspects of the area.
- —organize programs to meet identified needs of the community.
- —maintain access to public policy and decision making processes at Federal, State and Local levels of government in order to benefit UNI community.
- —monitor and evaluate local government services in order to encourage improved public services.
- —maintain communication with specific City departments in order to benefit UNI area.
- —develop and implement a community education process in order to inform residents of UNI's role and activities as well as to increase community's ability to effectively identify and address its needs.
- —supervise staff and volunteers participating in the community education process, community organizing activities and public affairs.

—assist Executive Director and Board of Governors as needed.

OFFICE MANAGER—$13,000

The Office Manager is directly responsible to the Executive Director. Responsibilities include, but are not limited to:

—day to day operations and maintenance of the organization's building.

—filing system to accommodate the organization's needs.

—purchase all consumable office supplies and necessary office furnishings.

—maintain a sufficient supply of all necessary office supplies.

—insure that all office equipment remain in operable condition.

—maintain a process which allows for an easy flow of correspondence.

—develop a fiscal record keeping system for all aspects of the organization's operating budget, e.g. program expenditures/revenues, salaries, grant monies, etc.

—supervise the activities of both the clerical and maintenance personnel.

—obtaining and distributing dates of all city public hearings and meetings pertaining to the Center South Side Community Development so that information can be relayed to all interested community residents.

—the operations at the UNI Center in the absence of the other administrative staff.

—assist Executive Director and Board of Governors as needed.

EXHIBIT B

III. PROGRAM DESCRIPTIONS/METHODOLOGY

A. Loan/Grant Program

Our objective in this program will be to provide financial assistance to those persons unable to obtain funds for rehabilitation through existing programs. We will develop a close working relationship with the residents to financially assist those who need it most. Persons qualified for City or 312 loans will be referred to the City.

Our organization's relationship with a resident will be a joint effort in identifying needs and types of assistance. We will then develop a result-oriented approach, undertake a cost/benefit analysis, and schedule rehab activities accordingly. Each activity will be monitored and evaluated to define impact and benefit.

Types of loans and grants will include, but not be limited to:

—Down payments,
—Complete rehabilitation,
—Partial loans or grants to enable persons to obtain City or 312 loans,
—Materials or labor only.

B. Recycling and Maintenance Program

UNI will provide a supervised crew for the salvage of building materials and mechanical equipment from structures to be demolished from our area as well as the South Town area. The salvaged material will be used to offset the cost of rehabilitation activities. This crew will also demolish and haul away dilapidated garages and sheds.

This crew will be utilized in performing minor home maintenance services for area residents who are unable to perform such activities. These activities will include, but not be limited to the following:

—Painting,
—Minor plumbing repairs,
—Weatherization,
—Debris removal,

—Maintenance of mechanical equipment (hot water heaters, furnaces, etc.)
—Installation of storm windows and doors.

C. Housing Rehabilitation Program

Under this program our organization plans to provide not only the necessary funds, but the actual work force needed to perform the rehabilitation activities. This service will also be available to those persons receiving City loans, 312 loans and private financing. The materials salvaged by the Recycling/Maintenance Specialists will be used to help offset the rehabilitation cost.

Goals:

1. To perform major rehabilitation activities on ten (10) structures.
2. To perform interim rehabilitation and minor repairs on twenty (20) structures.

The above figures reflect the minimum activities. We want to provide rehabilitation assistance to as many residents as possible.

D. Completion of Community Center

There is a need to complete the renovation of the UNI Community Center. This structure was leased from the Catholic Diocese in 1975. One-half of thebuilding was renovated and is now used to operate programs and dispense services to the community residents.

With the growth of these services, there is no longer enough space available to operate efficiently. The utilization of the top floor would mean added office space from which housing revitalization programs, the housing loan and grant program, and housing inspections program could operate.

In addition, a photography dark room to be used in conjunction with the communications system and photography classes, a gymnasium/auditorium, game room, and a library for use by all ages will be activities operating from the top floor.

There will also be three additional offices constructed on the first floor of the building to accommodate the expanded number of staff needed to handle the rapid growth of programs and activities.

The attic will have a floor laid down so a large storage area can be created and then utilized for the storing of building supplies and future usable items. Since the UNI Community Center has no chairs, tables, and other necessities of its own, we plan to acquire the building furnishings necessary for a community center.

GOVERNMENT EXHIBIT NO. 15
FOR THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF ILLINOIS
(6/2/81)

GRANT AGREEMENT

WITNESSETH, this agreement, executed on March 26, 1979, is made between the City of Peoria (City) pursuant to authority granted by City Council, and United Neighborhoods, Inc. (UNI), an Illinois not-for-profit corporation located at 219-221 South Saratoga, Peoria, Illinois, pursuant to authority granted by its Board of Governors;

WHEREAS, UNI was incorporated to provide various community services to communities within the City of Peoria;

AND, WHEREAS the services and programs developed, operated, and administered by UNI benefit the people of the City of Peoria;

AND, WHEREAS UNI provides needed services which might otherwise become direct or indirect obligations of the City of Peoria;

AND, WHEREAS both the City and UNI desire that UNI continue to provide such programs and services;

NOW THEREFORE, it is agreed, pursuant to the terms and provisions of this agreement, that the parties hereto agree as follows;

Section 1

The City shall grant the amount of $100,000.00 to the UNI. The amount granted herein shall be used solely for a program operated by UNI which provides loans and grants to the rehabilitation of residential housing units in the United Neighborhood area. The basic provisions and criteria for implementing the loan and grant program are set forth in an attachment hereto, said attachment made a part hereof.

Section 2

When the term "United Neighborhood area" or any other similar designation is used in this agreement, said term shall name and include that geographic area of the City of Peoria bounded by McArthur Highway, Seventh Street, Western Avenue, and Lincoln Avenue, all in the City of Peoria.

Section 3

The Grantee shall keep records accounting for the expenditure of all funds granted herein. Said records shall be maintained in the manner acceptable to the City. These records shall be made available to the City for inspection upon reasonable notice.

Every ninety (90) days from the date of this Agreement, the Grantee shall submit a report to the City detailing and accounting for the expenditures of the funds herein granted. This report shall include a statement delineating the receipt of all funds granted herein. Each such reported expenditure items shall include the amount and purpose of the expenditure. While it shall not be necessary to include the application date of each applicant with the report to be submitted to the City, the City shall have the right, upon reasonable notice, to inspect such applications.

Section 4

UNI hereby warrants that it, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply with all applicable provisions of Appendix F of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this agreement as if the words and terms thereof were set forth herein.

Section 5

If UNI shall violate any term or terms of this Grant Agreement, then the City, upon seven days written notice, shall be entitled to terminate this agreement. Said written notice shall set forth the date of termination. Upon such termination, all monies granted herein which are unexpended on the date notice is received shall be returned to the

City. In the event, however, that it is determined that any of said monies granted herein are willfully, intentionally, or fraudulently expended for purposes other than permitted in this grant agreement, UNI shall be liable to the City of Peoria for the amount of such monies up to $100,000.00. Unless otherwise limited by the terms of this agreement, City of Peoria shall have all other remedies provided to it by law and equity.

Section 6

UNI shall provide, no later than 18 months from the date hereof, an audit, compiled by a certified public accounting firm, of the expenditure of all monies granted herein. At the time of providing said audit, the Grantee shall supply with the City with a detailed report respecting the implementation of the program described in Attachment A hereto.

Section 7

As it is understood between the parties that the City is granting this money on reliance upon the unique abilities of UNI, the parties agree that UNI shall not assign any of its rights under this Contract to any other party unless first having obtained the written consent of the City.

In witness whereof, the parties have caused their signatures to be affixed thereo thus making this Grant Agreement effective on the date herein before mentioned.

CITY OF PEORIA

By ____________________
City Manager

By HELEN CHANDLER
Chairperson, Board of Governors

ATTEST:

By: SHIRLEY JOHNSON
Secretary

ATTACHMENT A

BASIC PROVISIONS AND CRITERIA FOR LOAN AND GRANT PROGRAM

1. Applicant must reside with United Neighborhoods area.

2. Applicant must own subject property. Persons purchasing property for Contract for Deed shall be deemed to have an ownership interest pursuant to this criteria *only if* the Contract is recorded at the Peoria County Recorder of Deeds Office.

3. Applicant must rehabilitate the subject property in a manner to meet minimum housing standards of the city of Peoria.

4. The maximum amount of any loan shall be $10,000.00.

5. The maximum amount for the grant shall be $5,000.00.

6. Priority for receiving a grant shall be upon elderly persons (those 55 years or older), physically, mentally, emotionally handicapped persons, disabled persons, or other persons who, at the discretion of UNI have shown the characteristics which would especially make such persons qualify to receive grants instead of loans.

7. Priority shall be given to applicants who need a grant or loan to become eligible for other financial assistance.

8. Repayment of loans shall be based upon an individual's ability to pay.

9. The funds received as repayment shall be used solely to fund additional grants and loans under the same criteria as listed herein.

10. In the event of the dissolution of UNI, any remaining funds from this program shall be returned to the City.

11. Final approval of loans or grants shall be made by the Housing Committee of the UNI Board of Governors.

GOVERNMENT EXHIBIT NO. 16
FOR THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF ILLINOIS

GRANT AGREEMENT

WITNESSETH, this agreement, executed on March 26, 1979, is made between the City of Peoria (City) pursuant to authority granted by City Council, and United Neighborhoods, Inc. (UNI), an Illinois not-for-profit corporation located at 219-221 South Saratoga, Peoria, Illinois, pursuant to authority granted by its Board of Governors;

WHEREAS, UNI was incorporated to provide various community services to communities within the City of Peoria;

AND, WHEREAS the services and programs developed, operated, and administered by UNI benefit the people of the City of Peoria;

AND, WHEREAS UNI provides needed services which might otherwise become direct or indirect obligations of the City of Peoria;

AND, WHEREAS both the City and UNI desire that UNI continue to provide such programs and services;

NOW, THEREFORE, it is agreed, pursuant to the terms and provisions of this agreement, that the parties hereto agree as follows:

Section 1

The City hereby grants to UNI the amount of $79,000.00 for equipment and the amoung of $147,000.00 for salaries in connection with UNI's recycling—maintenance program and housing rehabilitation program. The amounts budgeted for equipment and salaries are set forth in Exhibit A hereto. The job descriptions for which the salary amounts are granted are set forth in Exhibit B hereto. The money granted for equipment shall be expended within one year from this agreement. Any money not so expended for equipment shall be returned to the City.

Section 2

Under its recycling and maintenance program, UNI will provide a supervised crew for the salvage of building materials and mechanical equipment from structures to be demolished from the area bounded by MacArthur Highway, Seventh Street, Western Avenue, and Lincoln Avenue in Peoria, Illinois, as well as from the Peoria Southtown area. The salvage materials will be used to offset the cost of rehabilitation activities. UNI will have responsibility to demolish and haul away delapidated garages and sheds as well as primary structures.

UNI will be utilized in performing minor home maintenance services for residents within the area bounded by MacArthur Highway, Seventh Street, Western Avenue, and Lincoln Avenue in Peoria, Illinois, who are unable to perform such activities themselves. These activities will include, but shall not be limited to, painting, minor plumbing repairs, winterization, debris removal, maintenance of mechanical equipment, and repair of storm windows and doors.

UNI's housing rehabilitation program shall provide funds and the work force needed to perform rehabilitation activities. These activities are described in greater detail in Exhibit B.

Section 3

UNI hereby warrants that it, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply with all applicable provisions of Appendix F of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this agreement as if the words and terms thereof were set forth herein.

Section 4

If UNI shall violate any term or terms of this Grant Agreement, then the City, upon seven days written notice, shall be entitled to terminate this agreement. Said written notice shall set forth the date of termination. Upon such termination, all monies granted herein which are unexpended on the date notice is received shall be returned to the City. In the event, however, that it is determined that any of said monies granted herein which have been expended are willfully, intentionally, or fraudulently expended for purposes other than permitted in this grant agreement, UNI shall be liable to the City of Peoria for the amount of such monies up to $226,000.00. Unless otherwise limited by the terms of this agreement, City of Peoria shall have all other remedies provided to it by law and equity.

Section 5

UNI shall provide, no later than 18 months from the date hereof, an audit, compiled by the certified public accounting firm, of the expenditure of all monies granted herein. At the time of providing said audit, the Grantee shall supply the City with a detailed report respecting the implementation of the programs described herein.

Section 6

As it is understood between the parties that the City is granting this money on reliance upon the unique abilities of UNI, the parties agree that UNI shall not assign any of its rights under this Contract to any other party unless first having obtained the written consent of the City.

In witness whereof, the parties have caused their signatures to be affixed thereto thus making this grant agreement effective on the date herein mentioned.

CITY OF PEORIA

By ____________________________
City Manager

UNI

BY: HELEN CHANDLER
Chairperson, Board of Governors

ATTEST:

SHIRLEY JOHNSON
Secretary

EXHIBIT A

BUDGET

	Subtotal	*Total*
Recycling/Maintenance Program and Housing Rehabilitation Program		
Equipment		
Tools and Supplies for Crew	3,500.00	
Leasing, Maintenance and Insurance for three (3) Trucks	16,500.00	
Building Materials	3,500.00	
Acquisition for Demolition	37,000.00	
Demolition	17,000.00	
Office Equipment and Supplies	1,500.00	
		79,000.00
Salaries		
Housing Rehabilitation/Salvage Staff		
a. Rehabilitation Coordinator	15,500.00	
b. Assistant Housing Inspector	10,500.00	
c. Recycling/Mainenance Specialists	60,500.00	
1. Supervisor (1)—$23,000.00		
2. Specialists (3)—$37,500.00		
d. Rehabilitation Specialists	60,500.00	
1. Supervisor (1)—$23,000.00		
2. Specialists (3)—$37,500.00		147,000.00
Total		226,000.00

EXHIBIT B

JOB DESCRIPTIONS

A. Housing Rehabilitation/Salvage Staff

Salaries for ten persons, with a priority to hire unemployed persons, is being requested in the amount of $147,000.00. These monies will be paid as wages and benefits to:

Rehabilitation Coordinator (1)
Assistant Housing Inspector (1)
Recycling/Maintenance Supervisor (1)
Rehabilitation Supervisor (1)
Recycling/Maintenance Specialists (3)
Rehabilitation Specialists (3)

These employees will work with the staff of the UNI Community Center, whose major duties encompass all aspects of Community Development, both physical and progammatic.

Rehabilitation Coordinator—The duties of this position will be to contract with community individuals who apply for rehab assistance, contract with demolition firms, and purchase property for demolition. This individual will work closely with the UNI Housing Committee, Recycling/Maintenance Supervisor, Rehab Supervisor, the Assistant Housing Inspector and the UNI Center staff. He will also keep records and accounts for contracts, budgets, follow-ups, and volunteer hours.

The *Recycling and Maintenance Supervisor* will be a Journeyman Carpenter or equivalent and will work with the Housing Commmittee, Rehab Coordinator, Assistant Housing Inspector, Rehabilitation Supervisor and Center staff.

He will be responsible for the training of three (3) persons to identify and use recyclable materials needed for housing construction and/or rehabilitation and repair. He will also seek out buildings to be demolished, assure that all salvageable materials are stored properly, and acquired materials are delivered to properties designated for their use in rehabilitation. The final inspection of demolished structures and approval for payment of the demolition contractor by the coordinator rests with the Recycling/Maintenance Supervisor.

The *Rehabilitation Supervisor* will be a Journeyman Carpenter or equivalent and will be responsible for the training of three (3) persons in carpentry and other skills necessary to the rehabilitation and repair of homes so that they meet all required code standards. He will work closely with the Housing Committee, Rehab Coordinator, Recycling/Maintenance Supervisor, Assistant Housing Inspector, and Center staff. This individual will seek out homes to be rehabilitated, do a follow-up evaluation on each completed building, and assure that the homes meet current city code with verification coming from the Housing Inspector.

The *Assistant Housing Counselor* will be hired to work with a qualified city inspector to learn City Housing Codes and complete housing inspections. He will be available to the community for inspections, list required repairs, and do follow-up inspections to insure that the rehabilitated structures pass city code. In addition this person will counsel property owners to bring their house up to code.

He will, when qualified as an inspector, train others in inspection. He will work closely with the Housing Committee, Recycling and Maintenance Supervisor, Rehabilitation Supervisor, Rehabilitation Coordinator and Center Staff.

The *Six Rehabilitation and Recycling/Maintenance Positions* will be divided into two (2) crews of three (3) members, and will rotate as the supervisors designate so that they will acquire ability and knowledge in areas of demolition, salvaging, recycling, and rehabilitation and repair.

They will also learn skills in jobs such as replacing windows, rebuilding walls, repairing roofs, and foundations, etc., as well as painting, landscaping and yard work to enhance property.

A greater knowledge of math used in the building trades, contractual negotiations, budgeting and language usage will insure their ability to independently seek out lucrative employment once they are trained properly.

Therefore, the salaries of these persons will not only train unskilled persons to become self-sufficient, but will greatly enhance the community as a whole by removing eyesores, rehabilitating and beautifying homes, revitalizing an important segment of Peoria, and insuring the assistance and cooperation of Center South Side residents with the City in the area of complete community development.

GOVERNMENT EXHIBIT NO. 17
FOR THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF ILLINOIS
(6/2/81)

GRANT AGREEMENT

WITNESSETH, this agreement, executed on March 26, 1979, is made between the City of Peoria (City) pursuant to authority granted by City Council, and United Neighborhoods, Inc. (UNI), an Illinois not-for-profit corporation located at 219-221 South Saratoga, Peoria, Illinois, pursuant to authority granted by its Board of Governors;

WHEREAS, UNI was incorporated to provide various community services to communities within the City of Peoria;

AND, WHEREAS the services and programs developed, operated, and administered by UNI benefit the people of the City of Peoria;

AND, WHEREAS UNI provides needed services which might otherwise become direct or indirect obligations of the City of Peoria;

AND, WHEREAS both the City and UNI desire that UNI continue to provide such programs and services;

AND, WHEREAS the City of Peoria has previously granted an amount of $84,000.00 to UNI for the partial construction of community center;

AND, WHEREAS both parties hereto desire that said community center be completed;

NOW THEREFORE, it is agreed, pursuant to the terms and provisions of this agreement, that the parties hereto agree as follows:

Section 1

The City shall grant the amount of $105,000.00 to UNI for the sole and only purpose of finishing UNI's community center at 219-221 Saratoga, Peoria, Illinois. All construction must comply to applicable building codes and other laws of the City of Peoria and shall be completed within one year of this Agreement. Any amount not expended by the end of one year, shall be returned to the City. The commu-

nity center will be used for the following purposes, among others:

1. Administrative offices for the executive staff of UNI and for the Loan and Grant and Rehabilitation program.

2. The providing of public space for community meetings and for other social services.

3. Community services offered by UNI from time to time, including:
    a. Elderly Nutrition Program
    b. A tutoring Program

It is understood between the parties that this community center is a viable part of the Southside Neighborhood strategy.

Section 2

The Grantee shall keep records accounting for the expenditure of all funds granted herein. Said records shall be maintained in the manner acceptable to the City. These records should be made available to the City for inspection upon reasonable notice.

Every ninety (90) days from the date of this Agreement, the Grantee shall submit a report to the City detailing and accounting for the expenditures of the funds herein granted. This report shall include a statement delineating the receipt of all funds granted herein. Each such reported expenditure items shall include the amount and purpose of the expenditure.

Section 3

UNI hereby warrants that is, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply with all applicable provisions of Appendix F of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this agreement as if the words and terms thereof were set forth herein.

Section 4

If UNI shall violate any term or terms of this Grant Agreement, then the City, upon seven days written notice, shall be entitled to terminate this agreement. Said written notice shall set forth the date of termination. Upon such termination, all monies granted herein which are unexpended on the date notice is received shall be returned to the City. In the event, however, that it is determined that any of said monies granted herein which have been expended are willfully, intentionally, or fraudulently expended for purposes other than permitted in this grant agreement, UNI shall be liable to the City of Peoria for the amount of such monies up to $105,000.00. Unless otherwise limited by the terms of this agreement, City of Peoria shall have all other remedies provided to it by law and equity.

Section 5

UNI shall provide, no later than 18 months from the date hereof, an audit, compiled by a certified public accounting firm, of the expenditure of all monies granted herein. At the time of providing said audit, the Grantee shall supply with the City with a detailed report respecting the implementation of the community center.

Section 6

As it is understood between the parties that the City is granting this money on reliance upon the unique abilities of UNI, the parties agree that UNI shall not assign any of its rights under this Contract to any other party unless first having obtained the written consent of the City.

Section 7

In the event UNI is able to finish the community center for an amount less than $105,000.00 granted herein, such amount not used shall be returned to the City.

Section 8

UNI shall spend the monies herein granted for the below listed items in substantially the amounts listed therewith:

Completion of Community Center

Basement and Entrance	5,600.00
First Floor	6,200.00
Second Floor	43,200.00
Attic	6,500.00
Exterior, Fire Escape, etc.	24,000.00
Bldg. Furnishings	7,000.00
Utilities	5,000.00
Office Equipment	7,500.00
TOTAL	105,000.00

In witness whereof, the parties have caused their signatures to be affixed thereto thus making this grant agreement effective on the date herein before mentioned.

CITY OF PEORIA

/s/ ______________________________

City Manager

UNI

/s/ ______________________________

Chairperson, Board of Governors

ATTEST:

SHIRLEY JOHNSON

____

Secretary

GOVERNMENT EXHIBIT NO. 18
FOR THE UNITED STATES DISTRICT COURT,
CENTRAL DISTRICT OF ILLINOIS
(6/2/81)
CITY COUNCIL APPROVAL ON 8/28/79

CONTRACT AGREEMENT

WITNESSETH, this agreement, executed on Oct. 24, 1979, is made between the City of Peoria, Illinois (City) pursuant to authority granted by City Council, and United Neighborhoods, Inc. (UNI), an Illinois not-for-profit corporation located at 219-221 South Saratoga, Peoria, Illinois, pursuant to authority granted by its Board of Governors;

WHEREAS, UNI was incorporated to provide various community services to communities within the City of Peoria; and

WHEREAS, the services and programs developed, operated, and administered by UNI benefit the people of the City of Peoria; and

WHEREAS, UNI provides needed services which might otherwise become direct or indirect obligations of the City of Peoria; and

WHEREAS, both the City and UNI desire that UNI continue to provide such programs and services;

NOW, THEREFORE, pursuant to the terms and provisions of this agreement, the parties hereto agree as follows:

Section 1. The City shall grant the amount of $669,200.00 to UNI. The amount granted herein shall be used solely for a program operated by UNI which provides loans and grants to the rehabilitation of residential housing units in the designated Metropolitan Reallocation Grant Area. The basic provisions and criteria for implementing the loan and grant program are set forth in Appendix A, attached hereto, said attachment made a part hereof.

Section 2. When the term "Metropolitan Reallocation Grant Area" or any other similar designation is used in this agreement, said term shall name and include that geographic area of the City of Peoria bounded by Saratoga Street, Webster Street, McBean Street and Second Street.

Section 3. UNI shall have the responsibility for the administration of all aspects of the rehabilitation program with technical assistance from the City of Peoria for inspections and work specifications. Funds for the rehabilitation program as set forth in Section 1 shall be made available to UNI in amounts needed to satisfy their actual, immediate cash requirements.

Section 4. UNI shall keep records accounting for the expenditure of all funds granted herein. Said records shall be maintained in a manner acceptable to the City. These records shall be made available to the City for inspection upon reasonable notice.

Every ninety (90) days from the date of this Agreement, UNI shall submit a report to the City detailing and accounting for the expenditures of the funds herein granted. This report shall include a statement delineating the receipt of all funds granted herein. Each such reported expenditure item shall include the amount and purpose of the expenditure. While it shall not be necessary to include the application date of each applicant with the report to be submitted to the City, the City shall have the right, upon reasonable notice, to inspect such applications.

Section 5. UNI hereby warrants that it, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply cable provisions of Appendix F of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this agreement as if the words and terms thereof were set forth herein.

Section 6. If UNI shall violate any term or terms of this Grant Agreement, then the City, upon seven (7) days' written notice, shall be entitled to terminate this agreement. Said written notice shall set forth the date of termination. Upon such termination, all monies granted herein which are unexpended on the date notice is received shall be returned to the City. In the event, however, intentionally, or fraudulently expended for purposes other than permitted in this Grant Agreement, UNI shall be liable to the City of Peoria for the amount of such monies up to $669,200.00.

Unless otherwise limited by the terms of this agreement, the City of Peoria shall have all other remedies provided to it by law and equity.

Section 7. UNI shall provide, no later than 18 months from the date hereof, an audit, compiled by a certified public accounting firm, of the expenditure of all monies granted herein. At the time of providing said audit, UNI shall supply the City with a detailed report respecting the implementation of the program described in Appendix A hereto.

Section 8. As it is understood between the parties that the City is granting this money in reliance upon the unique abilities of UNI, the parties agree that UNI shall not assign any of its rights under this Contract to any other party unless first having obtained the written consent of the City.

In witness whereof, the parties have caused their signature to be affixed thereto thus making this Grant Agreement effective on the date herein before mentioned.

CITY OF PEORIA
/s/ ____________________
City Manager

UNI

/s/ HELEN CHANDLER
Chairperson, Board of Governors

ATTEST:

SHIRLEY JOHNSON
Secretary

APPENDIX A

BASIC PROVISIONS AND CRITERIA FOR LOAN AND GRANT PROGRAM

1. Applicant must reside within the Metropolitan Reallocation Grant area.

2. Applicant must own subject property. Persons purchasing property by Contract for Deed shall be deemed to have an ownership interest pursuant to this criteria *only* if the Contract is recorded at the Peoria County Recorder of DEEEDS' OFFICE.

3. Applicant must rehabilitate the subject property in a manner to meet minimum housing standards of the City of Peoria.

4. The maximum amount of any loan shall be $27,000.00.

5. The maximum amount of the grant shall be $7,500.00.

6. Priority for receiving a grant shall be upon elderly persons (those 55 years of older), physically, mentally, or emotionally handicapped persons, disabled persons, or other persons who, at the discretion of UNI, have shown the characteristics which would especially make such persons qualify to receive grants instead of loans.

7. Repayment of loans shall be based upon an individual's ability to pay.

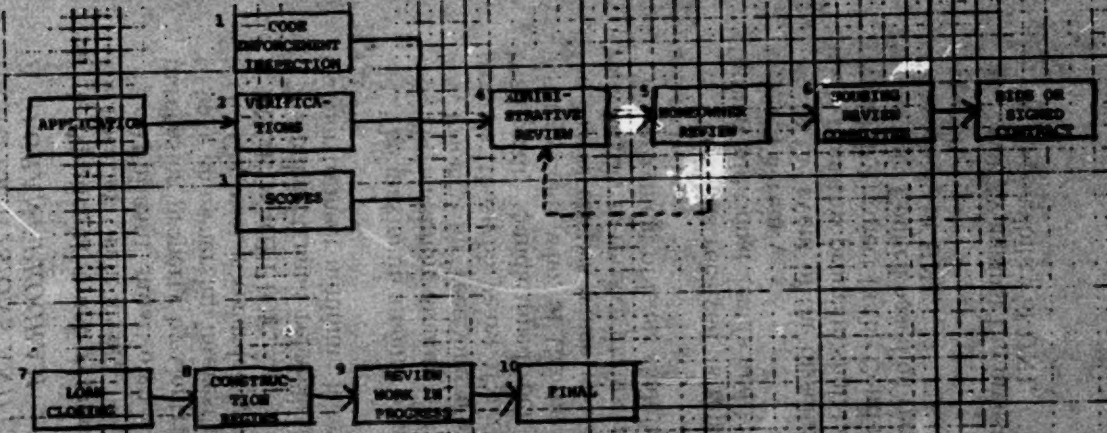
8. The funds received as repayment shall be used solely to fund additional grants and loans under the same criteria as listed herein.

9. In the event of the dissolution of UNI, any remaining funds from this program shall be used for a housing related community project in the Center South Side to be approved by the City Council based on recommendations of the Board of Governors of UNI.

10. * * * * *

11. Security against the investment in any property shall be the responsibility of UNI.

UNI REVIEW FLOW CHART


APPLICATION
1 CODE ENFORCEMENT INSPECTION
2 VERIFICA-TIONS
3 SCOPES
4 ADMINI-STRATIVE REVIEW
5 HOMEOWNER REVIEW
6 HOUSING REVIEW COMMITTEE
BIDS OR SIGNED CONTRACT
7 LOAN CLOSING
8 CONSTRUC-TION BEGINS
9 REVIEW WORK IN PROGRESS
10 FINAL

-1 To be done by the City of Peoria and U.N.I. inspector.

-2 Includes, but not limited to: (1) verification of ownership (title by Chicago Title); (2) certified copy of mortgage; (3) disposition of funds; (4) evidence of homeowner insurance (minimum coverage must be existing debt on property); (5) Federal Truth-in-Lending requirements.

-3 Shows all work to be done, including minimum code items.

-4 To be conducted by City of Peoria and UNI. All of the above must be included before this step.

-5 If the homeowner has any changes, the entire package must go back to administrative review.

-6 [illegible] City to begin draw-down procedures.

-7 Also must include signed contract with the owner and contractor.

-8 Before construction begins, contractor must present verification of insurance.

-9 To be preformed by City and UNI.

-10 To be preformed by City and UNI.

GOVERNMENT EXHIBIT NO. 25
FOR THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF ILLINOIS

AMENDMENT TO GRANT AGREEMENT

WITNESSETH, this Amendment, executed on May 5, 1980, is made by and between the City of Peoria ("City") pursuant to the authority granted by its City Council, and United Neighborhoods, Inc. ("UNI"), an Illinois not-for-profit corportion, located at 219-221 South Saratoga, Peoria, Illinois, pursuant to the authority granted by its Board of Governors:

WHEREAS, the City and UNI have previously entered into a Grant Agreement dated March 26, 1979 for the purposes and programs therein stated;

WHEREAS, said purposes and programs are continued to be administered by UNI, and

WHEREAS, the City of Peoria desires to aid UNI to continue such efforts.

NOW, THEREFORE, IT IS AGREED BY THE PARITES HERETO, that the Grant Agreement between such parties, executed on March 26, 1979, is modified as follows:

Section 1. The provisions of Sections 2, 3, 4, 5 and 6 of the previous Grant Agreement shall apply and be of equal force in this Amendment as if the words and terms therein set forth were set forth herein.

Section 2. Commencing fifteen (15) days from the date of this Agreement, the City shall pay UNI the sum of Nine Thousand Seven Hundred Two Dollars ($9702.00) and a like sum on the same day of the next succeeding five (5) months to defray the cost of administering the plans and programs set forth in the Grant Agreement of March 26, 1979. The monthly budget for said amount granted by this paragrah is as follows:

Utilities—$875.00
Office Equipment Supplies—$500.00
Professional Services—$1,000.00
Insurance—$380.00, property

Tools and Supplies—$200.00
Leasing and insurance for trucks—$1,400.00
Maintenance of trucks—$500.00
Building materials—$250.00
Maintenance of property—$150.00
Director of materials—$1,617.00
Rehabilitation Coordinator—$1,400.00
Assistant Rehabilitation Coordinator—$1,130.00
Health Insurance—$300.00

Section 3. In addition to the amounts herein granted, the City shall further grant to UNI, payable within thirty (30) days of the date of this Agreement, the amount of Sixty Five Thousand Dollars ($65,000.00) to defray the annual salary costs of four (4) staff personnel. The job description of these personnel is set forth in Attachment A to this Grant Agreement.

Section 4. UNI hereby warrants that it, any employee, agent or contractor employed or contracted with UNI for the pursuance of any of its corporate purposes, shall comply with all applicable provisions of Appendix "F" of the Municipal Code of the City of Peoria, said appendix providing for fair employment practices within the City of Peoria. The terms and provisions of said appendix shall be a part of this Agreement as if the words and terms thereof were set forth herein.

UNI warrants that it shall be subject, to the extent applicable, Executive Order 12246 entitled "Equal Employment Opportunity" and amended by Executive Order 11375 and as supplemented in Department of Labor Regulations (41 CFR, Chapter 60). All contracts for construction or repair shall include a provision for compliance with the Copeland Anti-Kickback Act (18 USC 874) as supplemented by Department of Labor Regulations, 29 CFR Part 3. All contracts shall include a provision for comliance with Davis-Bacon Act (40 USC 27, 6 at A-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). All contracts in excess of $2,000.00 for construction or in excess of $2,500.00 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work

Hours and Safety Standards Act (40 USC, 327-330) as supplemented by Department of Labor Regulations (29 CFR Part 5). All contracts negotiated by UNI for the improvements herein (except those in the amount of $10,000.00 or less) shall include a provision to the effect that the City, the Controller General of the United States of America or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this grant, for the purpose of making audit, examination, excerpts, and transcriptions therefrom. UNI shall comply with HUD Block Grant regulations (24 CFC 571.1, et seq.)

CITY OF PEORIA,

By ______________________
City Manager

UNITED NEIGHBORHOODS, INC.,
By HELEN CHANDLER

ATTEST:
By SHIRLEY JOHNSON

ATTACHMENT A

JOB DESCRIPTIONS

B. ADMINISTRATIVE STAFF

United Neighborhoods, Inc. is asking for $65,000 for four (4) full time staff positions to continue their community development and rehabilitation activities in cooperation with the city of the Center South Side of Peoria.

The four staff people will continue to work closely with city personnel in insuring that community development work in the areas of housing rehabilitation, demolition, community loan programs, and housing inspections services programs will continue to be successful.

In order to facilitate the community development work that is presently operating successfully, and to expand on the programs, there is a need to fund the following full time staff positions: Since UNI is a community run organization, the *Executive Director* will be delegating much organizational work to trained volunteers with some of his time allocated to these duties. He will be responsible for all directives from the various committees to the staff, and see that those directives are carried out. He will make regular reports to the committees and the Board of Governors regarding status of programs and activities, make sure that an adequate number of volunteers are trained to carry out assignments in all areas of programming and community development.

The Director of Program Development is directly responsible to the Management Committee, and to the Executive Director. He trains volunteers to work in organizational duties and in various programs. Much of his time is spent in preparing and/or conducting informational workshops, community programs, home and property maintenance workshops, and knowing about present and future city programs that will benefit community persons.

The Director of Community Development is directly responsible to the Planning Commitee and to the Executive Director. His responsibilities include working with city staff and residents to find ways to meet the needs of the community, to continually update the needs assessment that is conducted by his department, to attend any public meetings that are pertinent to community development, and to train volunteers to assist with various community development activities. He is also responsible for maintaining a clear communications system between the process for the community, and training community volunteers to assist in all facets of his position.

The Office Manager, the fourth position for which funding is requested, is directly responsible to the Executive Director. This position is responsible for maintaining a current file on city programs and activities that pertain to the Center South Side, maintaining a file on pertinent information gathered at public meetings, so that it is available to the community residents, being responsible for the smooth operation of the Community Center in the absence of other staff when they are working directly in the community. She is also responsible for all duties connected with the successful functioning of the business office of an organization.

All administrative staff will be available to give technical assistance to contractors, as it relates to his/her particular position.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 81-2206 and 81-2207

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

JAMES LEE HINTON AND ARTHUR DIXSON,
DEFENDANTS-APPELLANTS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS, PEORIA DIVISION.
NO. 81-CR-10007—**Robert D. Morgan,** *Judge.*

ARGUED FEBRUARY 9, 1982—DECIDED JULY 8, 1982

Before PELL, *Circuit Judge*, FAIRCHILD, *Senior Circuit Judge*, and ESCHBACH, *Circuit Judge.*

PELL, *Circuit Judge.* The appellents, Arthur Dixson and James Lee Hinton, were found guilty by a jury of violating 18 U.S.C. § 201(c)(1) and (2) by soliciting money in exchange for the award of housing rehabilitation contracts funded under the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5320 (Supp. III 1979) (the Act). Dixson and Hinton were, respectively, the Executive Director and Housing Rehabilitation Coordinator of a community based, nonprofit corporation called United Neighborhoods, Inc. (UNI). Pursuant to the Act, UNI had entered into a contract with the city of Peoria to administer federal funds awarded to Peoria under a Community Development Block Grant and a Federal Metro Reallocation Grant from the United States Department of Housing and

Urban Development (HUD).[1] The Community Development Block Grant program administered by UNI was entirely sponsored by federal funds, which paid UNI's costs as well as the salaries of its employees. The primary issue in these appeals is whether Dixson and Hinton were "public officials" within the meaning of 18 U.S.C. § 201(c) (1976).

During 1979 and 1980, the city of Peoria received a Community Development Block Grant and Metro Reallocation Grant from HUD. The purpose of these grants was community development, including the rehabilitation of residential structures. In accordance with the Act and regulations pursuant to the Act, the city contracted with UNI to administer the grant funds. For housing that met the statutory and regulatory criteria for the funds, UNI had the responsibility of soliciting bids from contractors to perform the housing rehabilitation. After the receipt of bids, the Housing Committee of UNI was responsible for awarding the contract to the successful bidder. There was testimony, however, from several witnesses that contracts were awarded without obtaining the approval of the Housing Committee. Successful bidders were paid for their work by UNI from the grant funds it had received from the city, which had previously received the funds from HUD. UNI had to account to the city for the expenditure of the federal funds, and the city, in turn, was responsible for accounting to HUD for all funds it had received.

Ora Logsdon, a contractor who received several housing contracts from UNI, was the primary Government witness against Dixson and Hinton. He testified that he had received rehabilitation contracts for ten houses from UNI pursuant to an agreement with Dixson and Hinton to pay them 10% of the amount of each contract. He said he would pay Dixson and Hinton their 10% after cashing the checks he had received for his work from UNI.

Gerald Lilly, another contractor, testified that he had been told by Dixson that he should pay 10% of the contract price in order to receive a rehabilitation contract. At one point Lilly met with Dixson and Hinton who helped him prepare his bids. Hinton told Lilly on which houses to bid and recommended that the amount of one bid be lowered. Hinton also reassured Lilly that submitting the bids was just a formality. Subsequently Lilly paid Dixson when he received his first check from UNI.

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[1] Both Community Development Block grants and Federal Metro Reallocation grants are governed by the Housing and Community Development Act of 1974. These grant programs shall be referred to collectively as the Community Development Block Grant program.

I. Hinton and Dixson as "Public Officials"

Section 201(c)(1) of 18 U.S.C. prohibits any "public official" from directly or indiretly asking, demanding, soliciting, accepting, or receiving anything of value in return for being influenced in the performance of any official act. 18 U.S.C. §§ 201(c)(1) (1976). Section 201(a) defines "public official" to include any person "acting for or on behalf of the United States or any department, agency or branch of Government thereof." 18 U.S.C. § 201(a) (1976). Both appellants, relying primarily on the decisions of the Second Circuit in *United States* v. *Loschiavo*, 531 F.2d 659 (2d Cir. 1976), and *United States* v. *Del Toro*, 513 F.2d 656 (2d Cir.), *cert. denied*, 423 U.S. 826 (1975), assert that they cannot be considered "public officials" because they were not acting for or on behalf of the United States.

This court's recent decision in *United States* v. *Mosley*, 659 F.2d 812 (7th Cir. 1981), is dispositive of the arguments advanced by the appellants in support of their position that they were not acting for or on behalf of the United States. In *Mosley*, we distinguished *Loschiavo* and *Del Toro* as involving a separate statutory scheme (the "Model Cities" program) from that in *Mosley* (the Comprehensive Employment and Training or "CETA" program). In light of the statute, regulations, and legislative history of the CETA program, we concluded that federal government involvement in the CETA program was more subtantial than that in the Model Cities program, to the extent that Mosley was acting for or on behalf of the United States in the CETA program. This conclusion was buttressed by review of Mosley's position within the federal program. *Id.* at 814-15.

The present case involves a different statutory scheme from that in *Mosley*, and, for that matter, from that in

Loschiavo and *Del Toro.* Although the Act consolidated into one program several community development programs including the Model Cities program at issue in *Loschiavo* and *Del Toro,* federal involvement in the Community Development Block Grant program differs significantly from what it had been in the Model Cities program. The Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and all sub-grantees responsible for local distribution of grant funds. Two of the stated objectives of the Act are "substantial expansion of the greater continuity in the scope and level of Federal assistance" and the "development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid." 42 U.S.C. § 5301(b)(2) and (d) (Supp. III 1979).

In order for an applicant to receive a grant, the applicant must submit to the Secretary of HUD, *inter alia,* a three-year comprehensive community development plan, a detailed program of implementation, and a housing assistance plan, that must be approved by the Secretary prior to funding. *Id.* § 5304. The activities which may be performed under a Community Development Block Grant program are circumscribed in great detail. *Id.* § 5305. In addition, annual performance reports must be submitted with an assessment of compliance with the objectives of the Act. The Secretary is also directed to make reviews and audits of the grantees' programs on at least an annual basis to determine whether the grantees are meeting the federal standards and to adjust federal funds in accordance with such findings. *Id.* § 5304(d). The Secretary reserves the right to audit the financial transactions of fund recipients. *Id.* § 5304(g).

Pursuant to the statute, the Secretary of HUD has issued extensive regulations governing Community Development Block grants. 24 C.F.R. Part 570 (1981). These regulations govern in detail grant procedures, as well as program design, management, and administration. Specifically, section 570.204 governs eligible activities by private non-profit entities such as UNI. 24 C.F.R. § 570.204 (1981). Section 570.507 provides that OMB Circular No. A-102 governs the procurement of materials and services funded under the program and procured by subgrantees and subrecipients. *Id.* § 570.507. Section 570.509 reserves to the Secretary a right of access to all books, accounts, records, reports, files and other papers or property of subgrantees for the purpose of making surveys, audits, examinations, excerpts, and transcripts. *Id.* § 570.509. Section 570.900 sets forth the performance standards by which all recipients of funds are to be evaluated by the Secretary, the reports to be submitted by recipients, and the records to be maintained by recipients. *Id.* § 570.900-.913.

Although the purpose of the Act was, in part, to allow flexibility to local units in administering the grants, the legislative history demonstrates that the Act was primarily intended to improve federal supervision over federal housing and urban development programs. Senate Report No. 93-693 notes that the consolidation of community development programs was designed to produce a single, more comprehensive community development program "primarily to insure that Federal funds would be used with a priority" to meet the objectives of the Act. *S. Rep. No.* 93-693, 93d Cong., 2d Sess. 2, *reprinted in* 1974 *U.S. Code Cong. & Ad. News* 4273, 4274. Under the Community Development Block Grant program, as under the CETA program in *Mosley*, the federal funds flow from the local sponsor to the recipient of a contract rather than directly from the agency. Nevertheless, it is clear from the legislative history of the Act, as it was in the legislative history of CETA, that the purpose of this procedure was to streamline the funding process rather than to abdicate federal control over the substantive aspects of the program. Thus, the statute, regulations, and legislative history manifest Congress' intent to promote efficient, effective federal supervision over the Community Development Block Grant program. The extent of federal involvement is such that Dixson and Hinton were acting on behalf of the United States in their administration of the federal funds under the program.

Analysis of Dixson's and Hinton's positions within the program buttresses our conclusion that they were "public officials" within the meaning of § 201(a). The salaries of each and the entire cost of the program they administered were funded by the federal government for federal objectives. Their employment by the state does not preclude a determination that they were acting on behalf of the United States. *See, e.g., United States v. Mosley*, 659 F.2d 812 (7th Cir. 1981); *United States v. Kirby*, 587 F.2d 876 (7th Cir. 1978); *United States v. Griffin*, 401 F.Supp. 1222 (S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976); *United States v. Gallegos*, 510 F. Supp. 1112 (D.N.M. 1981). Dixson, as Executive Director of UNI, and Hinton, as UNI's Housing Rehabilitation Coordinator, were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds. In light of the broad interpretation to be accorded section 201, *United States v. Mosley*, 659 F.2d at 816, we conclude that Dixson and Hinton were acting on behalf of the United States and, therefore, were "public officials."

The appellants attach significance to testimony that only the Housing Committee could award contracts. However, there was also evidence Dixson and Hinton had awarded contracts without the approval of the Housing Committee. Indeed, apparently neither in dealing with the contractors displayed any aspect of hypobulia. Viewing the evidence in the light most favorable to the Government, *Glasser v. United States*, 315 U.S. 60, 80 (1942), the contractors favored by the appellants were successful in their bids, so that Dixson and Hinton were in effect authorizing the expenditure of federal funds themselves. Even if they had not been able to award contracts on their own, we question whether the requirement of Housing Committee approval alone would so attenuate the appellants' authority to administer federal funds as to preclude their status as public officials. *See United States v. Mosley*, 659 F.2d at 816.

The authority of the appellants in relation to the federal government is closely analogous to the authority of the defendant in *United States v. Griffin*, 401 F. Supp. 1222

(S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976), and the appellants' attempts to distinguish that case are unpersuasive. In *Griffin*, the defendant was the principal officer and agent of a corporation awarded an area management broker contract by HUD. The corporation was responsible for soliciting competitive bids on housing contracts under a federal program. The corporation then submitted the three lowest bids to HUD with a recommendation that the lowest bid be accepted. Ordinarily the lowest bidder was awarded the contract if the bid met the federal criteria and estimate set by the area broker. The corporation received payment from HUD for each contract issued. As in the instant case, the defendant in *Griffin* solicited a 10% kickback for his favoritism in accepting bids although he alone did not have technical authority to award contracts. As the district court stated in finding the defendant Griffin, as well as the corporation, to be persons "acting for or on behalf of the United States":

> While the low bidder among those from which the area broker solicited bids was not guaranteed of being awarded the contract by HUD, testimony was presented that such low bidder was in fact awarded the job at least 95% of the time. Thus the Court feels that the defendants were placed in a position of responsibility and were enabled to exercise discretion to act for and on behalf of HUD in operating the system to provide for the rehabilitation of HUD properties. The mere fact that defendant Jack Griffin, as President of MMC, is an employee of the corporation and not of the United States does not prevent him from acting as a "public official" as defined in 18 U.S.C. § 201(a).

401 F. Supp. at 1230. Similarly, Dixson and Hinton had the authority and power to influence or control the dispersal of

federal funds on behalf of HUD.[2] Accordingly, Hinton and Dixson qualify as "public officials" within the meaning of section 201(c).[3]

II. Sufficiency of the Evidence as to Hinton

Hinton's remaining objections on appeal may be briefly addressed. Hinton claims that he was entitled to acquittal because there was insufficient evidence on all relevant counts for the jury to find that Hinton awarded any contracts, or that he accepted or solicited a bribe from Gerald Lilly as alleged in Count X of the indictment. Both objections are without merit.

On appeal the evidence must be viewed in the light most favorable to the Government, together with all reasonable inferences. As previously pointed out, the testimony of Ora Logsdon was that he had been awarded contracts which, according to other witnesses' testimony, had not been awarded by the Housing Committee. Logsdon testified that he had been awarded ten contracts, and that Hinton and Dixson had agreed to award him all the contracts he could handle if he paid them kickbacks. Oscar Penn, a member of the Housing Committee, testified that housing rehabilitation contracts were awarded that had not been approved by the Committee. As to Count X of the indictment,[4] there was testimony that Hinton, with assistance from Dixson, told Lilly on which houses to bid, that one bid had to be lower than he had originally made it, and that the bids were simply a formality. Lilly went to UNI's office with $2,000.00 from his first check from UNI, and paid the money to Dixson who was in the office at that time. This evidence, and the inferences which can be drawn therefrom, were sufficient to sustain the jury verdict as to Hinton on all counts.

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[2] In emphasizing the extent to which contracts were actually awarded based on Hinton's and Dixson's actions, we do not intend to suggest that the solicitation of a bribe actually had to have resulted in the award of a contract for a violation of section 201 to have occurred. *E.g.*, *United States v. Arroyo*, 581 F.2d 649, 654 n.10 (7th Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979). The frequency with which the appellants effectuated the solicited result relates to their control and discretion over the funds and, thus, to the issue of whether they were acting on behalf of the United States in their positions.

[3] We attach no significance to the testimony of James Barnes, program manager of the Chicago area office of HUD, that he was not specifically aware of UNI and was not required to be aware of its existence. Mr. Barnes' personal knowledge of a specific subgrantee in a regional area is of little probative value in assessing the pervasiveness of federal regulation of the program.

[4] Count X alone was predicated on 18 U.S.C. § 201(c)(1) *and* (2). Section 201(c)(2) prohibits a public official from, directly or indirectly, asking, demanding, exacting, soliciting, seeking, accepting, receiving

III. The Cross-Examination of Ora Logsdon

Hinton objects to the district court's refusal to allow him cross-examination of Logsdon for impeachment purposes based on Logsdon's purported misappropriation of certain UNI funds. Generally a trial court has wide discretion to limit cross-examination, with the standard on review for the adequacy of cross-examination on bias or motive being whether the jury had sufficient information to make a discriminating appraisal of the witness's bias or motive. *United States v. Fitzgerald*, 579 F.2d 1014 (7th Cir.), *cert. denied*, 439 U.S. 1002 (1978).

Logsdon admitted to bribing Hinton and Dixson. He was questioned in cross-examination about law enforcement officers having sought him out for information, about denying any involvement in the bribery to the officers, about his first interview by law enforcement officials in his attorney's office, and about owing money to the Government for unpaid taxes. The cross-examination made it clear that Logsdon was a party to the illegal transaction and that he had been sought out by law enforcement officials. This cross-examination was sufficient to allow the jury to assess adequately Logsdon's bias or motive so that the district court's limitation on further cross-examination was not an abuse of discretion.

Finally, Hinton appears to suggest that the indictment was defective because it failed to allege how Hinton was

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or agreeing to receive anything of value in return for being influenced to commit *or aid in committing*, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States. 18 U.S.C. § 201(c)(2) (1976) (emphasis added).

acting for or on behalf of the United States. However, each count of the indictment alleged that Hinton and Dixson, as employees of UNI, were involved in accepting bids and awarding and administering contracts between UNI and contractors for the rehabilitation of housing under grant funds from HUD, a department of the Government of the United States, to the city of Peoria, pursuant to a contract between UNI and the city. These allegations of the indictment were clearly sufficient to apprise Hinton of the nature and elements of the charge as set forth in *Hamling v. United States*, 418 U.S. 87, 117 (1974).

For the reasons stated herein the judgment of the district court is as to both appellants on all counts

AFFIRMED.

Supreme Court of the United States

No. 82-5279

ARTHUR DIXSON, PETITIONER,

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is consolidated case No. 82-5331, *James Lee Hinton* v. *United States*, and a total of one hour is allotted for oral argument.

December 13, 1982

Supreme Court of the United States

No. 82-5331

JAMES LEE HINTON, PETITIONER

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Seventh—Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is consolidated with case No. 82-5279, *Arthur Dixson* v. *United States*, and a total of one hour is allotted for oral argument.

December 13, 1982

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ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

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Attorney

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Washington, D.C. 20530
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QUESTION PRESENTED

Whether petitioners, as officers of a quasi-public corporation administering federal housing rehabilitation grants, are "public officials" within the meaning of 18 U.S.C. 201(c).

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-5279

ARTHUR DIXSON, PETITIONER

v.

UNITED STATES OF AMERICA

No. 82-5331

JAMES LEE HINTON, PETITIONER

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ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A10) 1/ is reported at 683 F.2d 195.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 1982. The petition for a writ of certiorari in No. 82-5279 was filed on August 24, 1982, and the petition in No. 82-5331 was filed on August 31, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

1/ "Pet. App." refers to the appendices in both Nos. 82-5279 and 82-5331, which contain the same record material and are identically paginated.

STATEMENT

Following a jury trial in the United States District Court for the Central District of Illinois, petitioners were convicted on nine counts of soliciting money in exchange for the award of housing rehabilitation contracts, in violation of 18 U.S.C. 201(c)(1) and (2) (Pet. App. A1). Each was sentenced to a term of 7½ years' imprisonment to be followed by three years' probation (82-5331 Pet. 4).

The evidence presented at trial established that during 1979 and 1980 the city of Peoria, Illinois, received a Community Development Block Grant and Metro Reallocation Grant from the United States Department of Housing and Urban Development (HUD), funded under the Housing and Community Development Act of 1974, 42 U.S.C. (& Supp. IV) 5301-5320. In accordance with the Act, the city contracted with a community-based, nonprofit corporation called United Neighborhoods, Incorporated (UNI) to administer the funds awarded to Peoria under the grant. Petitioner Dixson was Executive Director of UNI, while petitioner Hinton was its Housing Rehabilitation Coordinator (Pet. App. A1-A2).

In administering grant funds under the Act, UNI was responsible for soliciting bids from contractors to perform housing rehabilitation on eligible structures, and for awarding the contract to the successful bidder. Contractors were paid for their work by UNI from grant funds it received from the city, which in turn received the funds from HUD. The grant program administered by UNI was entirely sponsored by federal funds, which covered UNI's costs and the salaries of its employees. UNI had to account to the city for the expenditure of the grant funds, and the city was responsible for accounting to HUD for all funds it had received (Pet. App. A2, A4-A6).

Two contractors who received several housing contracts through UNI testified that petitioners had solicited money in exchange for the awarding of the contracts. In one case, the contractor received rehabilitation contracts for ten houses pursuant to an agreement with petitioners to pay them ten percent of the amount of each contract (Pet. App. A2-A3). The contractor paid petitioners the agreed amount after cashing the checks he received from UNI for the work (id. at A3). Similarly, another contractor was told by petitioner Dixson that he should pay ten percent of the contract amount in order to receive the award. Petitioners told the contractor which houses he should bid on, recommended that the amount of one bid be lowered, and collected payment after the contractor received his check from UNI. Petitioner Hinton reassured the contractor that submitting the bids was just a formality (ibid.).

ARGUMENT

Petitioners contend (82-5279 Pet. 5-10; 82-5331 Pet. 6-10) that, as UNI employees, they cannot be considered "public officials" subject to the federal bribery and graft statute, 18 U.S.C. 201(c). This claim is without merit.

18 U.S.C. 201(c)(1) and (2) provide that it is a felony for any "public official" to demand and receive payments in return for being influenced in the performance of an official act, or for committing a fraud on the United States. Section 201(a) defines "public official" to include any person "acting for or on behalf of the United States, or any department, agency, or branch of Government thereof * * * ."

The court of appeals below correctly concluded (Pet. App. A3-A8) that petitioners were acting on behalf of an agency of the United States in administering HUD grant funds under 42 U.S.C. 5301-5320. Petitioners' salaries and the entire cost of UNI's operations were funded by the federal government for federal objectives, and petitioners exercised substantial authority in the expenditure of these federal funds. Furthermore, the statutory and regulatory framework of the Community Development Block Grant program provides for extensive federal involvement and supervision in the administration of grant funds, including federal eligibility and compliance standards, procurement and performance criteria, and reporting, review and auditing requirements (Pet. App. A4-A6). For these reasons, the court of appeals concluded (id. at A8) that petitioners were "public officials" within the meaning of 18 U.S.C. 201(c).

a. This conclusion is fully supported by the legislative history of the federal bribery and graft statute and the decisions of other courts that have interpreted it. The Senate report accompanying the legislation that became 18 U.S.C. 201 makes clear Congress' intent that the term "public official" be "broadly defined" to include "persons carrying on activities for or on behalf of the Government." S. Rep. No. 2213, 87th Cong., 2d Sess., 7-8 (1962). The broad purpose of the statute, moreover, is "to protect the public from the evil consequences of corruption in public service." United States v. Mosley, 659 F.2d 812, 815-816 (7th Cir. 1981), quoting United States v. Griffin, 401 F. Supp. 1222, 1230 (S.D. Ind. 1975), aff'd, 541 F.2d 284 (7th Cir. 1976); see also United States v. Evans, 572 F.2d 455, 479-480 (5th Cir.), cert. denied, 439 U.S. 870 (1978).

To effectuate this purpose, courts have repeatedly held that a person who has authority in the expenditure of funds under a program sponsored and supervised by the federal government may be considered a "public official * * * acting for or on behalf of the United States" within the meaning of 18 U.S.C. 201. See United States v. Hollingshead, 672 F.2d 751, 753-754 (9th Cir. 1982) (upholding the conviction under 18 U.S.C. 201 of a Federal Reserve Bank employee with authority to recommend expenditure of federal funds, subject to approval by the Federal Reserve Board or its delegates); United States v. Mosley, supra, 659 F.2d at 814-816 (upholding the conviction under 18 U.S.C. 201 of a state employee with responsibility for determining applicants' eligibility for jobs federally funded under the Comprehensive Employment and Training Programs Act); United States v. Kirby, 587 F.2d 876, 879-880 (7th Cir. 1978) (upholding the conviction under 18 U.S.C. 201 of privately employed grain inspectors licensed under federal law who had authority to issue certificates required by federal law); United States v. Gallegos, 510 F. Supp. 1112, 1113-1114 (D. N.M. 1981) (conviction under 18 U.S.C. 201 of a state employee responsible for administering federal grants to homeowners under the Farmers Home Administration (FHA) program and subject to supervision by an FHA official); United States v. Griffin, supra, 401 F. Supp. at 1230 (conviction under 18 U.S.C. 201 of an area management broker responsible for soliciting and receiving bids for rehabilitation of properties under the control of HUD). See also Harlow v. United States, 301 F.2d 361, 370-371 (5th Cir.), cert. denied, 371 U.S. 814 (1962), and United States v. Levine, 129 F.2d 745, 747-748 (2d Cir. 1942) (applying the bribery statute to other persons not on the payroll of the federal government).

In view of petitioners' roles in administering HUD grant funds and the extensive involvement and supervision of the federal government in that grant program, the court of appeals correctly concluded that petitioners were "public officials" subject to the sanctions of Section 201. A narrower application of Section 201 on the facts of the present case would emasculate the effect of its definitional phrase "on behalf of," and defeat the congressional directive that the term "public officials" be "broadly defined." S. Rep. No. 2213, supra, at 7-8.

b. Petitioners' reliance (82-5279 Pet. 5-6; 82-5331 Pet. 6-7) on United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), and United States v. Del Toro, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975), for the proposition that status as a "public official" depends on a person's "employment relationship with the federal government" is inapposite. The court below found (Pet. App. A6) that petitioners' salaries and the cost of the program they administered "were funded by the federal government for federal objectives" and petitioners "were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds." Clearly, therefore, petitioners' key position within a federal program was a factor in the court's conclusion that petitioners were "acting on behalf of the United States." 18 U.S.C. 201(a). But the court did not consider this factor alone: it explained (Pet. App. A4) that "federal involvement in the Community Development Block Grant program differs significantly from what it had been in the Model Cities program" at issue in Loschiavo and Del Toro. The court specifically found that the Community Development Block Grant program involved substantially greater federal eligibility, performance, and compliance standards, more direct federal supervision, and more extensive reporting requirements than the program at issue in Loschiavo and Del Toro (id. at A3-A6). Thus, the facts of this case present much stronger support for the conclusion that petitioners were acting on behalf of the United States in administering HUD grant funds than did the record in Loschiavo or Del Toro. This factual distinction, not a conflict among the circuits, accounts for the different result. Cf. United States v. Hollingshead, supra, 672 F.2d at 753-754; United States v. Mosley, supra, 659 F.2d at 814-816, United States v. Gallegos, supra, 510 F. Supp. at 1113-1114. 2/

Petitioner Dixson's reliance (82-5279 Pet. 7-8) on United States v. Hollingshead, supra, and Slater v. United States, 562 F.2d 58 (1st Cir. 1976), is equally unavailing. Contrary to petitioner's implication (82-5279 Pet. 7), the court in Hollingshead did not agree that the Second Circuit had established its own "test" in Loschiavo and Del Toro, requiring a federal employment relationship. Instead, like the court of

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2/ The approach of the Loschiavo and Del Toro cases, moreover, has not been followed outside the Second Circuit. See, e.g., United States v. Hollingshead, supra; United States v. Mosley, supra. More recent cases have focused on practical realities in ascertaining who is a "public official" within the meaning of 18 U.S.C. 201, rather than on the technical classification of a person as a federal employee. See cases cited at pages 4-5, supra.

appeals in the present case, the court in Hollingshead factually distinguished Loschiavo and Del Toro. It found that the defendant was a "public official" because the circumstances before it were "similar to United States v. Mosley, [supra], 659 F.2d 812 (7th Cir. 1981)." United States v. Hollingshead, supra, 672 F.2d at 754; see also Pet. App. A3-A7. The court's statement in Slater v. United States, supra, is also entirely consistent with the opinion of the court of appeals in this case. The Slater court merely doubted whether 18 U.S.C. 201 applied to Model Cities program employees, as in Loschiavo and Del Toro, and expressed no views on the statute's application to persons administering the HUD Community Development Block Grant program under the circumstances here. 562 F.2d at 61.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

D. LOWELL JENSEN
Assistant Attorney General

R. CHRISTOPHER LOCKE
Attorney

NOVEMBER 1982

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

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ARTHUR DIXSON, PETITIONER

vs.

UNITED STATES OF AMERICA

XX.

JAMES LEE HINTON, PETITIONER

vs.

UNITED STATES OF AMERICA

82-5279
No. 82-5331

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the BRIEF FOR THE UNITED STATES IN OPPOSITION by First-Class Mail, on November 19, 1982, to:

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NOVEMBER 19 , 1982

Rex E. Lee
REX E. LEE
SOLICITOR GENERAL

DOJ

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Nos. 82-5279 and 82-5331

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v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER DIXSON

DONALD V. MORANO
1231 Jarvis Avenue
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REPLY BRIEF FOR PETITIONER DIXSON

Respondent characterizes the test adopted by the Second Circuit Court of Appeals for determining who is a "public official" under 18 U.S.C. 201 as "inapposite." Response, p. 5. Then, without further adieu, respondent proceeds to opt for the broad and ambiguous tests adopted by the Seventh Circuit in the instant case. Id. et seq. Only, however, by ignoring the Second Circuit's analysis and rulings in United States v. Del Toro, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975), and United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), and also by ignoring the adoption of the Second Circuit test by the Ninth Circuit Court of Appeals in United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1982), can respondent conclude that no conflict exists among the circuits.

(i) In Loschiavo, 531 F.2d at 661, the court states:

> "The type of public project involved, or the amount of federal funding entailed, may be important in applying other parts of the statute ... but for the purpose of deciding Morales' status as a 'public official' under section 201(a), it is not the aspects of the particular project which are of greatest significance, but the character and attributes of his employment relationship, if any, with the federal government."

The Ninth Circuit in Hollingshead, 672 F.2d at 753 and 754, gives a concise articulation of the Second Circuit test in the following words:

> "Since the bribed Model City Official [in Del Toro and Loschiavo] 1) was a city employee; 2) was carrying out tasks delegated by another city employee; and 3) had his recommendations screened by

> three city agencies prior to HUD approval, the court found that he was entirely under state supervision and authority pursuant to the Model City Program."
>
> ...
>
> "[Also,] [i]n Loschiavo and Del Toro ... the city official never dealt directly with HUD."

(ii) Applying the Second Circuit test, adopted also by the Ninth Circuit, to petitioners, their convictions would have to be reversed.

(a) Petitioners (as employees of UNI, a community based, non-profit corporation, under contract witht he City of Peoria, Illinois, to administer a Community Development Block grant for it) had no employmenet relationship with the City of Peoria, let alone with the federal government.

(b) Petitioners were employees of UNI, but would not be subject to section 201 as public officials even if they had been employees of the City of Peoria.

(c) Petitioners carried out tasks delegated to them by members of the Board of Directors of UNI (Tr. 227, 231), but would not be subject to section 201 even if they were carrying out tasks delegated to them by employees of the City of Peoria.

(d) Petitioners never dealt directly or in any way with the City of Peoria, let alone HUD or the federal government.

(iii) Accordingly, regardless of whether the Seventh Circuit in its decision is correct in finding that the Community Development Block Grant program "involved substantially greater federal eligibility performance and compliance standards, more direct supervision, more extensive reporting requirements than the [Model Cities] program at issue in Loschiavo and Del Toro (Id. at A3-A6)," Response,

p. 6, the Second Circuit test, which was adopted by the Ninth Circuit, and implicitly by the First Circuit,* mandates the reversal of their convictions. If petitioners had been employees of the City of Peoria in administering funds of the Model Cities Program, they would not be "public officials" under section 201 according to the Second Circuit test. A fortiori, as employees of UNI and with no contact or dealings with the City of Peoria in this capacity, they would not be subject to section 201.

(iv) As Dixson's original petition has argued, this Court should grant his writ of certiorari to resolve the conflict among the circuits and to remedy by its ruling potential constitutional infirmities in the Seventh Circuit's ambiguous and expansive definition of who constitutes a "public offical" under section 201. Petition 82-5279, pp. 8-10.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Donald V. Morano
DONALD V. MORANO
Attorney for Petitioner,
Arthur Dixson,
Petition 82-5279

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---

*In Slater v. United States, 562 F.2d 58, 61 (1st Cir. 1976), the court cited Del Toro as authority for the proposition that "it is doubtful" that appellant, who had served as the inspector of the work of contractors hired to carry out repairs financed by a Model Cities grant to the City of Boston, could be convicted under 18 U.S.C. 201.

AFFIDAVIT OF SERVICE

TO: Solicitor General
Department of Justice
Washington, D.C. 20530

I, Donald V. Morano, being duly sworn on oath, depose and state that I served the foregoing Reply Petition for a Writ of Certiorari, in accordance with Rule 28(c), to the above-mentioned individual at his respective address by depositing in the United States mail at the U.S. Postal Station, Dearborn & Adams, Chicago, Illinois, 60603, a true and correct copy thereof in a sealed envelope, postage prepaid, on the 29th day of November, 1982.

Donald V. Morano

Subscribed and sworn to
before me this 29th day
of November, 1982.

Barbara M. Bost
Notary Public

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Nos. 82-5279 and 82-5331

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UNITED STATES OF AMERICA

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether an employee of a community based, non-profit corporation, under contract with a city to administer a Community Development Block grant received from the U.S. Department of Housing and Urban Development (HUD) is a "public official" according to the Federal bribery statute, 18 U.S.C. 201.

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JURISDICTION

The judgment of the court of appeals was entered on July 8, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 201, the Federal bribery statute (18 U.S.C.), provides in pertinent part:

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
>
> (1) being influenced in his performance of any official act; or
>
> (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
>
> (3) being induced to do or omit to do any act in violation of his official duty . . . .
>
> (a) For the purpose of this section: "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such de-

> partment, agency, or branch of Government, or a juror . . . . "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

STATEMENT

On March 12, 1981, the Grand Jury returned a multicount indictment against petitioners, Arthur Dixson and James Lee Hinton (J.A. 3). It charged that in their capacity as "public officials," according to Section 201, they accepted bribes in return for awarding housing contracts that had been financed by a Community Development Block Grant from HUD to the City of Peoria, Illinois. Dixson and Hinton were, respectively, the executive director and rehabilitation coordinator of United Neighborhood, Inc. (UNI). Tr. 4.

United Neighborhood, Inc.

UNI was a non-profit, community based corporation that had been in existence since 1975. R., Govt. Exhibit 19: A Proposal To Stabilize and Revitalize the United Neighborhoods Community, Jan. 23, 1979, submitted by the UNI Board of Governors to the City of Peoria. Its long-range objective was to create a self-sufficient and desirable community in the center south side of Peoria's "Valley" area, a blighted and impoverished area of the city. *Id.* at 1.

UNI operated out of a renovated structure that had formerly been St. Patrick's Elementary School and sponsored numerous activities aimed at all segments of the community: *e.g.*, providing hot meals for senior citizens, tutoring for grade-school children, craft and sewing classes, and boxing clubs. At the center there also were the offices of the South Side Improvement Association's Outreach and Referral Program for Senior Citizens, the Mid-State Consumer Energy Council supported by the Illinois Public Action Council, and counseling services offered by staff members of the Human Service Center. *Id.*

The Community Development Block Grant Program

In 1974 Congress enacted the Housing and Community Development Act, 42 U.S.C. 5301-5320 (Supp. III 1979) (The Act). Although the main purpose of this legislation was to consolidate and simplify existing programs, it also contained the authority for developing several new programs, the most important of which was the far-reaching block grant community development program. Senate Report No. 93-693, 1974 U.S. Code Cong. & Ad. News 4273-4500. The bill followed the Nixon Administration's plan for an overhaul and consolidation of existing urban renewal and related programs and incorporated many features of the Administration's special revenue sharing Better Communities Act, S. 1743. *Id.* at 4274.

The Secretary of HUD remained in charge of this program, and there were fairly detailed procedures statutorily provided for the award of grants. 42 U.S.C. 5304. Congress specifically set forth requirements that the Nation's cities must meet to qualify for such grants:

> (1) a summary of a 4-year plan for meeting the community's development needs, including proposed programs to meet housing needs to prevent and eliminate slums and blight, and to improve community services; (2) a description of proposed activities and expenditures; (3) a certification that the applicant has met certain requirements related to the objectives of the act, citizen participation, and the provision of housing; and (4) a performance report assess-

> ing activities carried out under the program in relation to the community's goals and the bill's objectives. [*Id.* at 4274].

Inter alia, the applicant, a State or "a unit of general local government" must also provide satisfactory assurances that, prior to submission of its application, it has provided the residents of the community adequate information concerning the amount of funding available, and has given them a chance to participate in the development of the application and to express their views at public hearings. Section 5304(a)(6).

The Secretary of HUD is required by law to approve an application unless it clearly violates the objectives of this Act. Section 5304(c). Furthermore, unless the Secretary informs the applicant of specific reasons for disapproval of the application within 75 days after receipt, it is deemed approved. Section 5304(f). Once the grant is awarded, the grantee must make annual performance reports, which include any citizen comments submitted pursuant to subsection (a)(6)(D); and the Secretary must review and audit the program to determine whether the grantee has carried out a program substantially as described in the application. Section 5304(d). Also, financial transactions of recipients are subject to an audit by the General Accounting Office. Section 5304(g).

The Federal Grant Received By The City Of Peoria

In accordance with the above discussed statutory scheme (*i.e.*, 42 U.S.C. 5301-5320), in the year 1979 the City of Peoria applied for and received from HUD $400,000 via a Community Development Block Grant, Entitlement No. 79 MC 170018, and $636,000 via a Federal Metro Reallocation Grant from HUD. (J.A. 26). This latter grant was available according to the provisions of

Section 5306(d), which specify that additional funds be awarded to qualifying grantees of a specific category when more funds are available then were applied for.

James Barnes, program manager with the Chicago area office of HUD, was the manager of the Community Development Block Grant Program in the Western part of Illinois at this time and had a staff of five Community Development representatives under him. (J.A. 25). He was not, however, responsible for knowing the name of any sub-grantee, such as UNI. The contract between the city and HUD did not mention that UNI was a subcontractor, and Barnes testified that he was not even aware that the City of Peoria had hired UNI as its subcontractor. (J.A. 30).

The Agreement Entered Into Between The City Of Peoria And UNI

Because UNI already was established as a grass-roots, community organization and had the long-standing goal of rehabilitating low-income housing, the City of Peoria accepted UNI's proposal to administer the Community Development Block Grant Program for it (R., Govt. Exhibit 19), and on March 26, 1979 entered into four contracts with UNI. (J.A. 41, 50, 54, and 61, Govt. Exhibits 14, 15, 16, and 17).

The city provided UNI in excess of one million dollars from these HUD funds, so that UNI could provide loan assistance to homeowners in the center southside of the City of Peoria. (J.A. 35). It exercised supervision over this program by requiring that UNI report back to the city and also by making technical assistance available to UNI. (J.A. 32). However, the entire management of these funds was left to UNI, checks were made payable to UNI, and the city neither inspected the books of UNI nor looked into its disbursement of funds. (J.A. 34). These contracts made no mention that the funds to be administered by UNI had been received from HUD.

The Jobs Petitioners Held In UNI

Dixson was executive director, and Hinton was rehabilitation coordinator of UNI. The job of executive director was described as that of a kind of liaison officer, delegating work to trained volunteers and responsible for communicating directives from the various committees to the staff and for reporting back to the Board of Governors regarding the progress of such programs.[1] The rehabilitation coordinator received applications for housing assistance and bids from contractors, and transmitted this information to the Housing Committee. When the Committee took action he conveyed this information back to the relevant party. He also was required to keep all records regarding UNI's rehabilitation efforts.[2] Thus, one can see from these job descriptions that neither petitioner had the authority to award contracts between UNI and general housing contractors, as the indictment has alleged they did. (J.A. 4).

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[1] "Since UNI is a community run organization, the *Executive Director* will be delegating much organization work to trained volunteers with some of his time allocated to these duties. He will be responsible for all directives from the various committees to the staff, and see that those directives are carried out. He will make regular reports to the committees and the Board of Governors regarding status of programs and activities, make sure that an adequate number of volunteers are trained to carry out assignments in all areas of programming and community development." R., Govt. Exhibit 18, p. 7.

[2] "*Rehabilitation Coordinator* — The duties of this position will be to receive applications and full information on their homes from community individuals who wish to apply for assistance, to obtain full

The Course Of The Proceedings And Disposition Of The Case In The Lower Courts

Petitioners pleaded "not guilty" to all of the counts, and filed motions to dismiss, on the grounds that "the Indictment does not state facts sufficient to constitute an offense against the United States or the laws thereof"—namely, petitioners had not acted as "public officials" according to Section 201(a) in their employment with UNI. (J.A. 9 and 13). At the end of the prosecution's case in chief, petitioners moved for a judgment of acquittal on the same grounds, but it was denied. Tr. 261-262.

The jury found petitioners guilty as charged in all counts of the indictment. On June 10, 1981, petitioners filed motions in arrest of judgment and for a new trial. (J.A. 17, 18, and 20). Each petitioner once again argued that "he was not a public official as charged and at no time during the trial did the government prove that he was a public official," but these motions were denied.

Petitioners were sentenced, and, from the conviction, sentencing, and denial of pre-trial, trial, and post-trial motions, appealed. The Seventh Circuit Court of Appeals affirmed petitioners' convictions. (J.A. 75). On December 13, 1982, this Court granted petitioners' motions for writs of certiorari.

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information on structures to be demolished, to receive bids from contractors, and to present this information to the UNI Housing Committee. After approval, he will make contracts with residents, contractors, and demolition firms for required work. Records and accounts for contracts, follow-ups, and volunteer hours will be kept by this individual, and he will be required to give technical assistance to contractors in areas that his position relates to. He will also work closely with the Director of Materials, Crew, and Demolition, Rehab Supervisors, and the Community Development Department." R., Govt. Exhibit 18, p. 5.

SUMMARY OF ARGUMENT

Petitioners are alleged to be "public officials" according to 18 U.S.C. 201, as "persons acting for or on behalf of the United States . . . in any official function." But clearly petitioners in their employment with UNI performed no such official function for the United States or "any department, agency or branch of Government thereof." They were employees of UNI, a community based, non-profit corporation, and in their employment performed the tasks assigned to them by their superiors. They had no authority as executive director and rehabilitation coordinator, respectively, to award housing contracts on their own. They had no direct contact with the City of Peoria, let alone the Federal Government.

1. Congress defined narrowly the category of "persons acting for or on behalf of the United States . . . in any official function." We find embodied in the words of the United States Grain Standards Act of 1976, 7 U.S.C. 71-87, a description of the narrowly circumscribed class of persons who are deemed by Congress to be "public officials" notwithstanding the fact that they are not Federal employees. Such persons, whether they be self-employed, or employed by a State or local government, or the private sector, are subject to Section 201 as "public officials" when they officially inspect in the name and under the authority of the Federal Government.

Petitioners do not fall within that class. They are three degrees removed from being "public officials." (1) They were not City of Peoria employees involved in administering the Community Block Grant it had received. (2) They were not employees of UNI with direct contact with the City of Peoria, or members of the Housing Committee of UNI with the authority to award housing contracts. (3) Petitioners clearly did not "officially inspect" in the name of and under the authority of the Federal Government.

2. Even if for the sake of argument we allow ourselves to harbor a lingering doubt that petitioners are subject to Section 201 as "public officials," the dual principles of lenity and federalism make certain that they are not. Congress has traditionally been reluctant to define as a crime conduct denounced as criminal by the States. To preserve sensitive Federal-State relations, it has deferred to the States. Thus, whenever a Federal statute is being construed, there is added to the requirement that ambiguity be resolved in favor of the defendant, the requirement that the statute shall apply to a particular class of persons only if it is certain that Congress intended such an application.

In the United States Grain Standards Act, Congress narrowly defined the category of "public officials" who are "persons acting for or on behalf of the United States . . . in any official function." It expressly made Section 201 applicable to grain inspectors who are not Federal employees. In contrast, in the Community Development Act of 1974, 42 U.S.C. 5301-5320, Congress failed to apply Section 201 to any persons who are responsible for administering such grants. *Expressio unius est exclusio alterius.* Congress has never written or spoken one word that would suggest that it considered persons like petitioners as "public officials" according to Section 201. Such persons do not conduct "official inspections" for the Federal Government but are required to devise local, individualized strategies to remedy urban blight in their particular communities.

3. In the instant case, in which the Seventh Circuit Court of Appeals affirmed the convictions of petitioners, the court presents a confused definition of "public offi-

cial." It finds that petitioners are "public officials" because of the "substantial Federal supervision" of the Community Block Grant to the City of Peoria. But the court said it gave no significance to the testimony of the HUD official responsible for administering this grant that he did not "supervise" UNI or its employees. In fact he did not even know of its existence, nor was he required to do so. In its decision the court said that Barnes' testimony did not make petitioners any the less "public officials" because the court had found "pervasive Federal regulation" of the program. Thus, the court defined "substantial Federal supervision" to mean "substantial Federal regulation"—hardly a clear standard to apply.

The court's further confusion is expressed in designating petitioners "state employees." (J.A. 80). It argued that "their employment by the state does not preclude a determination that they were acting on behalf of the United States." *Id.*

4. It is highly dubious that actions by UNI, a private, non-profit corporation with an existence and goals prior to its receipt of Community Block funds from the City of Peoria, would constitute "state action" under the Fourteenth Amendment. As three recent decisions of the Court have held, complete government funding and extensive regulation of a program administered by a private corporation are not enough to make the acts of the corporation "fairly attributable to the state" and, thus, subject to the requirements of the Fourteenth Amendment.

But even if we assume, *arguendo*, that the actions of UNI would constitute state action, this entails only understanding them as acts of the City of Peoria, and not the Federal Government. Even Procrustes would be hard put to place petitioners in beds reserved for "public officials." He would have to do some lopping and stretching to get UNI in the bed as performing "state action" for the City of Peoria. But then he would have to stretch this "state action" to encompass action "for or on behalf of the United States." But how could he ever adjust the limbs of petitioners (who did day-to-day tasks assigned to them by their superiors in UNI) so that they fit the bed of "persons officially acting for the Federal Government as its official inspectors"?

THE ARGUMENT

A. THE VERY LANGUAGE OF THE BRIBERY STATUTE AND ITS LEGISLATIVE HISTORY ESTABLISH THAT CONGRESS NEVER INTENDED THAT INDIVIDUALS SUCH AS PETITIONERS BE SUBJECT TO IT

Petitioners were indicted and convicted as "public officials" within the meaning of 18 U.S.C. 201(a). (J.A. 3). The indictment simply alleged in each of the multiple counts that petitioners were "influenced in their performance of an *official act* in respect to the awarding of housing rehabilitation contracts; in violation of Title 18, United States Code, Section 201(c)(1)." *Id.* (Emphasis supplied). Congress, however, did not intend to include persons such as petitioners within the definition of "public official" in Section 201(a). According to Section 201(a):

> "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

Clearly petitioners did not hold any of the offices enumerated in Section 201(a) and were not "officers or employees" of the Federal Government. Therefore, if they constitute "public officials" according to Section 201, then they must do so under the category of "persons acting for or on behalf of the United States . . . in any official function." But clearly petitioners do not fall within that category.[3]

(1) The Restrictive Class Of Persons Covered By The Expression "Persons Acting For Or On Behalf Of The United States In Any Official Function"

That Congress never intended Section 201 to apply to petitioners is obvious from the way in which Congress defined the class of persons covered by the expression "persons acting for or on behalf of the United States" in the United States Grain Standards Act of 1976, 7 U.S.C. 71-87. Congress established standards for grain to promote the uniform application by official inspection personnel and to provide for an official inspection system. 7 U.S.C. 74. The more than thirty indictments handed down in the lower Mississippi area and the more than

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[3] The present text of Section 201 was drafted in 1962 and constituted "the substitution of a single comprehensive section of the Criminal Code for a number of existing statutes concerned with bribery." Senate Report No. 2213, 1962 U.S. Code Cong. & Ad. News 3853, 3854. In this Report, the summary discussion of Section 201 is in sharp contrast to the extended one of the conflict of interest section of the bill, which simplified and strengthened the earlier version. Also, in the interest of facilitating the Government's recruitment of persons with specialized knowledge for service on a part-time basis, it limited the impact of those laws on the persons so employed. *Id.*

In the 1962 Act, Section 201 consolidated in one statute the former Sections 201-213. Under the previous bribery statute, Sections 201-213 dealt with various categories of persons who were deemed "public officials." Consequently, the Report's characterization of the term "public official" as "broadly defined" does not mean that persons that forty defendants who pleaded guilty the year before its enactment illustrate the pervasive corruption in the grain inspection system which this statute was intended to remedy. Senate Report No. 94-747, 1976 U.S. Code Cong. & Ad. News at 6523. By placing all grain inspectors under the direct control of the Department of Agriculture, Congress strove to strengthen the grain inspection system and to restore the integrity and credibility of American grain. *Id.* at 6625.

Even the most cursory reading of the provisions of this Act reveals Congress' intent to give exclusive Federal jurisdiction for establishing, certifying, and enforcing grain standards. In Section 75, in which Congress defined the key terms of the Act, Congress modified many of the terms it was defining by the adjective "official"—*i.e.*, (i) "official inspection," (j) "official inspection personnel," (k) "official mark," (l) "official grade designation," (m) "official agency," (n) "official certificate" and "official form," (o) "official sample," and (x) "official weighing."

Congress created an Administrator in charge of this Federal Grain Inspection Service and under the general direction and supervision of the Secretary of Agriculture. 7 U.S.C. 75a. It authorized the Administrator to issue

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heretofore could not be prosecuted under the bribery statutes could now be prosecuted. As the report states:

> "The term 'public official' is broadly defined to include officers and employees of the three branches of government, jurors, and other persons carrying on activities for or on behalf of the Government." *Id.* at 3856.

Accordingly, we can infer from the Senate's failure to do little more in its Report than paraphrase Section 201(a), that it was not proposing to change the scope of the existing bribery statute in any way by its use of the expression "persons acting for or on behalf of the United States in any official function."

licenses for inspectors and mandated that only persons holding an unsuspended and unrevoked license or authorization from the Administrator perform any official inspection or weighing function. 7 U.S.C. 84(a).

Congress made all grain inspectors, even those who are employees of State or local governments, subject to the sanctions of Section 201. *Section 84(d) of the United States Grain Standards Act provides that all grain inspectors who are not Federal employees are subject to Section 201 as "persons acting for or on behalf of the United States."*[4]

Thus, all persons either licensed or authorized to inspect under this Act, even though they are not employed by the Service, are fittingly characterized as "public officials." They perform an official function for the Federal Government. The standards they apply and the certification they give are official. Such standards have been established and are enforced by the Federal Government.

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[4] "*Inspectors performing under contract not deemed Federal employees.*

Persons employed by an official agency (including persons employed by a State agency under a delegation of authority pursuant to this Act) and persons performing official inspection functions under contract with the Service shall not, unless otherwise employed by the Federal Government, be determined to be employees of the Federal Government of the United States; *Provided*, that such persons shall be considered in the performance of any official inspection, official weighing, or supervision of weighing function as prescribed by this Act or by the rules and regulations of the Administrator, as *persons acting for or on behalf of the United States, for the purpose of determining the application of Section 201 of title 18 of the United States Code to such persons* [emphasis supplied] and as employees of the Department of Agriculture assigned to perform inspection functions for the purposes of sections 1114 and 111 of title 18 of the United States Code." 7 U.S.C. 84 (d).

A person who performs such a function necessarily perceives himself as "a person acting for or on behalf of the United States in an official function." Similarly, all those who deal with him recognize that the value of his inspection is not derived from him personally or even the State or local government by whom he may be employed, but by the authority he possesses as an official inspector for the Federal Government.

The phrase "in any official function" which follows "persons acting for or on behalf of the United States, or any department, agency or branch of Government thereof" in Section 201(a) is not surplusage. It points the way to the meaning of "acting for or on behalf of the United States." It also underscores that no one can correctly be deemed a "public official" unless his actions can be ascribed to "the United States or any department, agency or branch of Government thereof."

Such a person serves as a surrogate, a vicar, a deputy for the Federal Government. When he inspects, even though he holds no Federal office or employment, he does so in the name of, and with the authority of, the Federal Government: "he views and examines officially." Webster's Third International Dictionary. When he grades, he applies Federal standards. Thus, although he does not hold a Federal office and has no employment relationship with the Federal Government, his acts are accurately described as "official" (adj.)—*i.e.*, those of a person "employed in some public capacity; authorised to exercise some specific function." Oxford English Dictionary. His official decisions are both authorized and authoritative.

(2) Because No City Of Peoria Officials Or Employees Who Had Responsibility For The Application Or Administration Of The Community Block Grant Could Be Subject To Section 201 As "Public Officials," *A Fortiori*, Petitioners, Who Were Employees Of UNI, A Non-Profit Corporation That Administered The Home-Owner Rehabilitation Program For A Blighted Area Of Peoria, Would Not Be Acting As "Public Officials" Subject To The Bribery Statute.

Granted, Congress rejected the Nixon administration's proposal that the Housing and Community Development Act of 1974 should award grants to States and local governments with absolutely no strings attached. Nevertheless, the bill that was passed, P.L. 93-383, 42 U.S.C. 5301-5320, in 1974, still was characterized as a "special revenue sharing program," in which the regulations to which grantees are subject are of the most general type: *e.g.*, requirements that the applicant describe in some detail how it intended to use the grant and that the applicant give periodic certification and performance reports about how it was using the money. Senate Report No. 93-693, 1975 U.S. Code Cong. & Ad. News at 4274.

It is the applicant who takes the initiative in making an application for such funds. 42 U.S.C. 5304. It is the "applicant's strategy" for eliminating the urban blight in its area; it is not some standardized Federal program for which the funds are to be used. 24 C.F.R. 507.204 (1981). It is truly a "community" project, in which the applicant is required to obtain community participation at every stage of applying for, and implementing, these community development block grants. *Id.* at Section 507.303; 42 U.S.C. 5301-5320.

Such a program, which envisioned the "establishment and maintenance of viable urban communities" by means of "systematic and sustained action by Federal, State, and local governments" [42 U.S.C. 5301(b)], contrasts dramatically with the objectives of the United States Grain Standards Act of 1976, P.L. 94-582, which were to strengthen the grain inspection system and to restore the integrity and credibility of American grain. Senate Report No. 94-747, 1976 U.S. Code Cong. & Ad. News at 6625. Congress hoped to restore confidence in the grain inspection system through a system of Federal inspection, which was intended to provide for "greater uniformity and consistency in inspection procedures and operations" and "the placement of inspectors under the direct control of the Department of Agriculture." *Id.* Contrary to the "local strategy" espoused in the Community Development Act, Congress declared that "grain inspection requires a national strategy, a national system, and a national responsibility." *Id.* at 6526. It argued that inspection had to be performed by the Federal Government because it was the United States Government that will certify that lots of grain are of the quality called for in contracts. *Id.*

A study of the contracts between the City of Peoria and UNI reveals the perception of both the city and UNI that this was a local project to accomplish local objectives. The four agreements signed by the parties on March 26, 1979 and the other on October 24, 1979 never even allude to the Federal Government or Federal regulations. (J.A. 41, 50, 54, and 61, Govt. Exhibits 14, 15, 16, and 17). The fact that all contracts for construction or repairs required that those involved comply with the Copeland Anti-Kickback Act, 18 U.S.C. 874, as supplemented by the Department of Labor Relations, 29 C.F.R. Part 3, does not change the essential community nature of the program. (J.A. 71, Govt. Exhibit 25).

City of Peoria personnel who administered the Community Block Grant could not be "persons acting for or on behalf of the United States . . . in any official function" because they did not serve as Federal inspectors: they did not apply national and uniform standards, and they would not have done so even had they been the UNI employees who awarded housing contracts. The affirmative standards about the contracts regarding amounts, etc., were those devised by the city and UNI. Surely, the requirement that these contracts could not violate Federal laws and the goals of the Act does not change their local character.

(3) Expressio unius est exclusio alterius.

Because this 1974 Housing and Community Development Act does not make State and urban employees subject to Section 201, we can infer that Congress did not intend that it should apply to such employees. In the subsequent United States Grain Standards Act of 1976, 7 U.S.C. 84(d), Congress provided that inspectors who are not Federal employees are subject to Section 201 and are "public officials" because they act "for or on behalf of the United States in an official function of inspecting grain." Consequently, the difference between the role of a State or local employee who serves as a grain inspector and one who administers a community block grant *and* Congress' failure to make the latter subject to Section 201, while making the former so subject, establishes that no officials or employees of the City of Peoria could be subject to Section 201.

Petitioners, therefore, were three degrees removed from being "public officials." They were neither City of Peoria employees nor employees of UNI with authority to award housing contracts on their own. But even if they had been employees of UNI with the authority to award housing contracts *or* employees of the City of Peoria who participated in administering the Community Block

Grant, they still would not have been "persons acting for or on behalf of the United States . . . in any official function."

B. EVEN ASSUMING, *ARGUENDO*, A RESIDUE OF DOUBT ABOUT WHETHER PETITIONERS DURING THEIR EMPLOYMENT WITH UNI ACTED AS "PUBLIC OFFICIALS," THE COGNATE PRINCIPLES OF LENITY AND FEDERALISM REQUIRE THE REVERSAL OF THEIR CONVICTIONS.

In our federal system of government, unless it is a national or constitutional question, the definition of crimes, whether of violence or fraud, is left to the States. Congress has traditionally been reluctant to define as a crime conduct denounced as criminal by the States. *United States* v. *Bass*, 404 U.S. 336, 349 (1971). "The power to define crimes belongs to Congress only as an appropriate means of carrying into execution its limited grant of legislative powers. U.S. Const. Art. 1, 8, cl. 18 [*i.e.*, the necessary and proper clause]." *Rochin* v. *People*, 342 U.S. 165, 168 (1952). Accordingly, when a Federal criminal statute is being construed, there is added to the requirement that ambiguity in the statute be resolved in favor of the defendant, the further requirement that no defendant should be prosecuted under the statute unless it is clear that Congress intended that Federal jurisdiction obtain in such a case. *Bass*, *id.* at 349.

The Principle Of Lenity

In *United States* v. *Enmons*, 410 U.S. 396 (1973), the Court ruled that the principle of lenity dictated that it affirm the district court's dismissal of the indictment. The Court ruled that striking employees who had used violence could not be convicted of extortion under the Hobbs Act [18 U.S.C. 1951 (1948)] because the principle of lenity mandated that it give the narrower of two possible constructions of the statute. The Court reasoned that, although violence by strikers might entail the "wrongful use of actual . . . force, violence, or fear . . . ," nevertheless the goal of such violence (*i.e.*, obtaining higher wages) was not "wrongful."

The Court in *Enmons, id.* at 410, concluded that if Congress had indeed wrought a major expansion of Federal jurisdiction in enacting the Hobbs Act, then it was inexplicable that its action had so long passed unobserved. Similarly, there is no reported case except the instant case in which defendants were found guilty under the bribery statute and in which they had not direct contact in their employment relationship with the Federal Government.

A fortiori, petitioners did not even have any direct dealings with the City of Peoria. Accordingly, the opinion of the Seventh Circuit Court of Appeals is unprecedented and violates the principle of lenity: it has given the Federal courts jurisdiction for the alleged receipt of bribes by petitioners, although they had no direct contact with the Federal Government or even the City of Peoria. It has intruded into an area of criminal law that is traditionally the responsibility of the States (*i.e.*, commercial bribery).[5]

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[5] By analogy, one of the factors to which the Court looks to determine whether Congress intended there to be a private cause of action to enforce a federal statutory scheme is whether the cause of action is "one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on federal law." *Cort* v. *Ash*, 422 U.S. 66, 78 (1975)

Comity And Federalism

According to *United States* v. *Bass*, 404 U.S. at 349, *supra*, if Congress has meant to effect a significant change in the sensitive relation between Federal and State criminal jurisdiction, then, it is essential that it clearly give assurances "that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Id.* Thus, in *Rewis* v. *United States*, 404 U.S. 808, 812 (1971), the Court declined to accept an expansive interpretation of the Travel Act, because such a construction would have required some corroboration in the legislative history, but none could be found. In *Bass*, the Court concluded that resolving an ambiguity in the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 1202(a), must be in favor of the narrower reading. *Id.* at 349. Therefore, the statutory phrase "in commerce or affecting commerce" must apply to "possess," "receive," and "transport," because "absent proof of some interstate commerce nexus . . . section 1202(a) dramatically intrudes upon traditional state criminal jurisdiction." *Id.* at 350.

In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Court held that the 1974 amendments to the Fair Labor Standards Act extending its minimum wage and maximum hour provisions to almost all employees of States and their subdivisions were not within the authority granted Congress by the commerce clause, because they operated directly to displace a State's ability to structure employer-employee relations in an area of traditional government functions and thus impaired a State's ability to function effectively within the federal system. Petitioners are not arguing that it would have been unconstitutional for Congress to have drafted a bribery statute that would have subjected State and city employees who administered a Community Development Block Grant to it. Rather, petitioners argue only that Congress has traditionally deferred to the States in the area of criminal law, and especially when State and local governmental employees are the ones concerned.

It would be presumptuous of Congress to decide that such State and local governments are not capable of drafting appropriate criminal sanctions against employees who deserve such punishment. It also would be presumptuous of Congress to draft legislation that intrudes into the area of State criminal law. The strictures against making City of Peoria employees subject to the bribery statute apply equally to employees of UNI, since UNI was directly responsible to the city for its management of the housing rehabilitation program.

C. THE SEVENTH CIRCUIT DECISION IN *HINTON* SHOULD BE REVERSED BECAUSE ITS DEFINITION OF WHO CONSTITUTES A "PUBLIC OFFICIAL" IS CONSTITUTIONALLY VAGUE AND POTENTIALLY SUBSUMES UNDER IT ALL EMPLOYEES WHO ARE ALLEGED TO HAVE COMMITTED FRAUD IN THE HANDLING OF FEDERAL FUNDS.

The definition of who constitutes a "public official" under Section 201 given by the Court of Appeals for the Seventh Circuit in this case is ambiguous and, therefore, violates the constitutional requirement that criminal statutes provide adequate notice. *See, e.g., Grayned* v. *City of Rockford*, 408 U.S. 104, 108-109 (1972). The court in *Hinton* announced that its decision in *United States* v. *Mosley*, 659 F.2d 812 (7th Cir. 1981), was dispositive and established that petitioners were subject to Section 201 as "public officials," because even though *Mosley* involved a different statutory program (*i.e.*, CETA), both programs involved "substantial Federal supervision."

(J.A. 77); *United States* v. *Hinton*, 683 F.2d 195, 197 (7th Cir. 1982).

1. The court found that "Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and all sub-grantees responsible for the local distribution of grant funds." (J.A. 78; *id.* at 197-98). The court, however, gave the so-called "Federal supervision" an attenuated meaning: the strongest sense of "supervision" the court gave in the examples it provided of Federal supervision were that the Secretary of HUD "is directed to make reviews and audits of the grantees' programs on at least an annual basis" on the basis of which he may adjust grants for failures to meet federal standards" and "the Secretary reserves the right to audit the financial transactions of fund recipients." (J.A. 78; *id.* at 198). But the definition of "supervision" given in Webster's Third International Dictionary is hardly satisfied by these two examples. Webster defines "supervision" as

> : the act, process, or occupation of supervising : direction, inspection, and critical evaluation : OVERSIGHT, SUPERINTENDENCE (under the *supervision* of an unbiased international commission—*Current Biog.*)

A more accurate expression to describe the court's basis for deciding that petitioners constituted "public officials" is that petitioners acted as "public officials" because of the extensive and substantial *regulation* of the Community Development Block Grant Program administered by UNI: *e.g.*, applicants had to meet certain standards, and the Secretary of HUD issued extensive regulations governing Community Development Block Grants. 24 C.F.R. Part 570 (1981). (J.A. 78; *id.* at 198).

The court revealed that it was using the word "supervision" in a very weak and even Pickwickian sense. It stated in a final footnote to its discussion that it attached no significance to the testimony of the program manager of the Chicago area office of HUD who had the duty of overseeing the distribution of the Community Block Grant to the City of Peoria during 1979 and 1980, that he did not know, nor was he required to know, the identity of UNI or the fact that the city had hired a sub-grantee to administer the program, because the court said it had found "pervasive federal regulation" of the program. (J.A. 82; *id.* at 200 n. 3). Instead, if the court had tested whether petitioners constituted "public officials" on the "substantial federal supervision over . . . sub-grantees responsible for local distribution of grant funds" [J.A. 78; *id.* at 197-198], as it said it had, then the court should have ruled that petitioners were not public officials because there was absolutely no supervision by the Federal Government of UNI, nor was there required to be any.

The court's characterization of Mr. Barnes' ignorance about the existence of UNI as "personal" ignorance *[id.]* distorts the significance of his testimony. An accurate adjective to describe his ignorance would be "official" ignorance, since he, as the primary Federal official responsible for the administration of the Community Block Grant, neither knew nor was required to know the identity of UNI. (J.A. 27 and 30). Accordingly, the only way the court has avoided retracting its statement that the standard of *Mosley* —namely, that substantial Federal supervision is dispositive of whether petitioners constitute "public officials"—is by equivocating: *i.e.*, by redefining "substantial Federal supervision" to mean "pervasive Federal regulation." The court, thereby, has left U.S. attorneys, defense lawyers and trial judges with a nightmare, since they are expected to make decisions about whether specific individuals can be prosecuted under Section 201 according to an inconsistent standard.

2. The court made a second attempt to articulate a standard for its ruling that petitioners constituted "public officials." It did so in terms of petitioners' positions within the Community Development Block Grant Program. (J.A. 80; *id.* at 198). The court concluded it made no difference whether or not petitioners could award housing contracts on their own without the approval of the Housing Committee, because they would be "public officials," in either case. (J.A. 80; *id.* at 199). Thus, the court once again attenuated its standard for determining that petitioners were "public officials" to mean "having the authority and power *to influence* or control the dispersal of federal funds on behalf of HUD." (J.A. 81-82; *id.*). (Emphasis supplied).

The court was impressed that the salaries of petitioners and the entire cost of the programs they administered "were funded by the federal government for federal objectives." (J.A. 80; *id.* at 198-199). Then the court erroneously assumed that petitioners were employed by the State, arguing that "their employment by the state does not preclude a determination that they were acting on behalf of the United States." (J.A. 80; *id.* at 199).

We, thus, can infer that, according to the court, any person whose salary is derived from Federal funds and who has some influence in the dispersal of Federal funds can be prosecuted as a "public official" under Section 201. The court's expansive construction of Section 201 in effect enables U.S. attorneys to prosecute any person who is alleged to have committed fraud in handling Federal funds when his own income can be viewed as largely derived from the same source: *e.g.*, State, city and local governmental employees, building contractors, pharmacists, physicians, and nursing home personnel.[6]

D. BECAUSE EXTENSIVE GOVERNMENTAL REGULATION OF AN ENTITY DOES NOT MAKE ITS ACTIONS "STATE ACTIONS" UNDER THE FOURTEENTH AMENDMENT OR ACTIONS "UNDER COLOR OF STATE LAW" ACCORDING TO SECTION 1983 OF THE CIVIL RIGHTS ACT, *A FORTIORI*, PETITIONERS AS EMPLOYEES OF UNI WITH ALLEGED INFLUENCE IN THE DISPERSAL OF FEDERAL FUNDS IN AWARDING HOUSING CONTRACTS SHOULD NOT BE DEEMED "PUBLIC OFFICIALS" UNDER SECTION 201.

The decision of the Seventh Circuit Court of Appeals in the instant case is an aberration. According to the Court's reasoning in *Rendell-Baker* v. *Kohn*, 102 S.Ct. 2764 (1982), *Blum* v. *Yaretsky*, 102 S.Ct. 2777 (1982), and *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974), it is highly dubious that actions of UNI in administering the Community Development Block Grant could be viewed as "state action" according to Section 1983 of the Civil Rights Act: *i.e.*, that UNI's actions are "fairly attributable to the state," which here is the City of Peoria. *See*

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[6] The descriptive definition and test enunciated by the Second Circuit in United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), regarding who is a "public official" are consonant with Congressional intent. In *Loschiavo*, the court specified that the test for determining whether a particular individual is a "public official" under Section 201 is not the type of public project or the amount of federal funding but the "character and attributes of the individual's employment relationship, if any, with the federal government." *Id.* at 66. The court suggested one practical way of making this determination was whether any Federal agency has the power to hire or fire the individual in question. This latter formula correctly specified the class intended by Congress, except that "the power to hire or fire" has a metaphorical meaning when the Federal official so qualifies because

Lugar v. *Edmondson Oil Co.*, 102 S.Ct. 2744, 2754 (1982). *A fortiori*, the court's decision is unprecedented, since it necessitates the conclusion that UNI's acts "were fairly attributable to the Federal Government" *and* also that petitioners as employees of UNI, capable of exerting influence in awarding housing contracts, were "public officials," "acting for or on behalf of the Federal Government . . . in their official function."

1. In *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 145, *supra*, the Court ruled that the termination of a customer's electric service without notice, a hearing, or an opportunity to pay amounts found due, by a privately owned and operated utility which held a certificate of public convenience from the State of Pennsylvania, did not have a sufficiently close nexus with the State of Pennsylvania to be "fairly attributable to it, even though the public utility was extensively regulated by the State, enjoyed a virtual monopoly in the area, and concerned an essential service.

2. In *Rendell-Baker* v. *Kohn*, 102 S.Ct. 2764, *supra*, the Court held that the discharge of two teachers of a nonprofit, private school for socially maladjusted students was not actionable under the civil rights act even though: (a) virtually all of the school's funds were derived from the State of Massachusetts in accordance with an

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he is a "person acting for or on behalf of the United States . . . in an official function." Such officials, though not employees of the Federal Government, would have to be licensed or at least authorized by "some department, agency or branch" of the Federal Government, before they would be allowed to do their official inspecting and, correlatively, they would be subject to the deprivation of this Federal licensing or authorisation. *See* also the earlier companion case of United States v. Del Toro, 513 F.2d 656 (2d Cir.), *cert. denied*, 423 U.S. 826 (1975).

Act of 1972 to pay for the tuition of such students, (b) a school performs a "public function," and (c) the school was subject to extensive regulation by the State in order to qualify and remain eligible for such funds.

3. In *Blum* v. *Yaretsky*, 102 S.Ct. 2777, *supra*, the Court held that decisions by nursing homes to discharge, or to transfer to nursing homes with lower levels of care, medicaid patients did not constitute "state action" even though: (a) more than 90% of the medical expenses of patients was State subsidized, (b) there was extensive Federal and State regulation of nursing homes, (c) Congress required the periodic review of patient care "to safeguard against unnecessary utilization of such care and services and to assure that payments . . . are not in excess of reasonable charges consistent with efficiency, economy, and quality of care," and adjustment of benefits results from the decision to discharge or transfer a patient.

Thus, according to the Court's reasoning in these three cases, actions by UNI, a community based, non-profit corporation, would seem not to be "state actions," "fairly attributable to the state." Nearly 100% government funding of the housing rehabilitation program administered by the City of Peoria and extensive regulations of the program by the Federal, State and City government are not enough to make UNI's actions fairly attributable to the City of Peoria and thus subject to the due process requirments of the Fourteenth Amendment.

But, even if we assume, *arguendo*, that UNI's actions constitute "state action," it remains far-fetched to say that petitioners acted as Federal public officials. The finding of state action would only mean that UNI's actions were attributable to the City of Peoria, not the Federal Government. Furthermore, even if we assume, *arguen-*

do, that UNI's actions were fairly attributable to the Federal Government, we would have to go further and say that petitioners' employment relationship with UNI was such that they "acted for or on behalf of the United States . . . in their official function." This we cannot say.

CONCLUSION

For the reasons stated, we respectfully request that the convictions of petitioners be reversed.

Respectfully submitted,

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Nos. 82-5279 and 82-5331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ARTHUR DIXSON, *Petitioner,*

v.

UNITED STATES OF AMERICA

JAMES LEE HINTON, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR PETITIONER JAMES LEE HINTON

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QUESTION PRESENTED

Whether petitioner, an employee of a private corporation which was the sub-grantee of Community Development Block Grant funds, was a public official within the meaning of Title 18 United States Code § 201(a).

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The opinion of the court of appeals (J.A. 75) is reported at 683 F.2d 195.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 1982. The petition for writ of certiorari was filed on August 31, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 18 Section 201(a) provides

> For the purpose of this section:
>
> "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and
>
> "person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and
>
> "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

Title 18 Section 201(b) provides

Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent:

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty; or

* * *

Title 18, Section 201(c), United States Code provides

Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

* * *

> shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

STATEMENT

Petitioners James Lee Hinton and Arthur Dixson were named in an eleven count indictment returned by a federal grand jury for the Central District of Illinois on March 12, 1981. James Hinton was charged with nine counts of bribery in violation of 18 U.S.C. § 201(c)(1) and with one count of being an accessory to bribery under 18 U.S.C. § 201(c)(2). The indictment alleged that on certain dates, Hinton and Dixson as "public officials" "solicited . . . and received . . ." money in exchange for awarding housing rehabilitation contracts. (J.A. 3). Hinton filed a pretrial motion to dismiss the indictment on the grounds that he was not a "public official" within the meaning of 18 U.S.C. § 201. (J.A. 9). This motion was denied, and, following a jury trial Hinton was convicted on all counts. The trial court denied Hinton's timely motions for new trial and in arrest of judgment, and sentenced Hinton to a term of 7½ years imprisonment on counts I-VI to be followed by three years probation on counts VIII-X. (J.A. 24).

During 1979, the City of Peoria, Illinois (hereinafter referred to as Peoria) was the recipient of over one million dollars in Community Development Block Grant funds from the United States Department of Housing and Urban Development (HUD) (R.110). The block grant funds were made available by the Housing and Community Development Act of 1974, 42 U.S.C. § 5301-5320 (Supp. III 1979). The grant funds were to be used by Peoria for various community development activities, including the rehabilitation of residential structures. (R109-110). Once in receipt of the block grant funds, Peoria could, pursuant to the Act and its regulations, contract with a local, non-profit organization which in turn would administer the expenditure of the grant monies. (R110-111). United Neighborhoods, Inc. (hereinafter referred to as U.N.I.) was a private, non-profit corporation engaged in community service, located in Peoria, Illinois. (R123). In 1979 and 1980 Peoria and U.N.I., through its chairwoman Helen Chandler, entered into a series of agreements. (J.A. 41, 50, 54, 61, 65, 70). Under the terms of these agreements Peoria granted sums of money to U.N.I to fund a housing rehabilitation program which was operated by that organization. In May of 1980, Peoria and U.N.I. entered into a final grant agreement. This agreement contained an additional provision whereby U.N.I. warranted it would be subject to the Copeland Anti Kickback Act and the Davis Bacon Act. (J.A. 70, 71-Ex. 25). The grants included money for salaries for U.N.I. employees. (J.A. 41, 54). The money Peoria gave to U.N.I. originated from the Community Development Block Grant funds given to Peoria by HUD. (R125).

James Hinton was employed by U.N.I. as housing rehabilitation coordinator. (R265). He was hired in March, 1979 by the U.N.I. board of directors. (R265). Hinton's duties included soliciting bids from contractors for work under U.N.I.'s housing rehabilitation program. (R265-266). Hinton was to submit housing rehabilitation contract proposals to the U.N.I. Housing Committee which was to approve and award all contracts. (R226-232). Hinton had no actual authority to award housing rehabilitation contracts. (R266). At trial a contractor named Ora Logsdon testified that he received contracts for rehabilitation work on ten houses pursuant to an agreement with Hinton and Dixson, whereby he paid them 10% of the amount of each contract. (R166-167). Another contractor, Gerald Lilly testified that he paid a bribe to Dixson in return for receiving a rehabilitation contract on one house. (R78).

On July 8, 1982 the United States Court of Appeals for the Seventh Circuit affirmed the convictions of petitioners. The court held that the extent of federal involvement in the block grant program was such that Hinton and Dixson were acting for or on behalf of the United States in their administration of federal funds under the program, and were therefore "public officials" under 18 U.S.C. § 201(a). (J.A. 79).

SUMMARY OF ARGUMENT

1. James Hinton was not a "public official" as defined by 18 U.S.C. § 201(a), and therefor his conviction for bribery under 18 U.S.C. § 201(c) must be reversed. 18 U.S.C. § 201(a) defines "public official" to include an "officer or employee, or a person acting for or on behalf of the United States . . ." Since petitioner was not a federal officer or employee, the question becomes whether he was an individual "acting for or on behalf of the United States."

A. Analysis of § 201(a), its legislative history and case law demonstrates that there must be a contractual or agency relationship between petitioner and the federal government before he can be deemed to be acting for or on behalf of the United States. Such a relationship is lacking in the present case, and the facts disclose that the real nexus between petitioner and the federal government consists of the presence of federal block grant funds. At best the definition of "public official" as contained in § 201(a) is ambiguous in its application to petitioner.

Accordingly this Court should apply the rules previously enunciated in *Krichman* v. *United States*, 256 U.S. 363, *Rewis* v. *United States*, 401 U.S. 808 and *United States* v. *Bass*, 404 U.S. 336. Any ambiguity with respect to the ambit of the term "public official" should be resolved by limiting it to those persons specifically contemplated by Congress, namely, federal officers or employees or individuals who perform activities for the government through a contractual or agency relationship.

B. Petitioner was not acting "for or on behalf of the United States" by reason of the Housing and Community Development Act. (42 U.S.C. § 5301-5325) (The Act).

An analysis of the Act and its regulations, along with the relationship between HUD, the City of Peoria, U.N.I., and petitioner reveal that petitioner was not acting for the federal government. Federal involvement in the block grant program does not serve to elevate petitioner to the status of public official. The correct test for determining status as a public official is that advanced by the Second Circuit in the cases of *United States* v. *Del Toro*, 513 F.2d 656 and *United States* v. *Loschiavo*, 531 F.2d 659, namely, the particular individual's relationship to the federal government. Applying this test to the facts at bar, it is clear petitioner was not a "public official" within the meaning of 18 U.S.C. § 201(a). Accordingly, petitioner's conviction under 18 U.S.C. § 201(c) must be reversed.

ARGUMENT

I.

JAMES HINTON, AS AN EMPLOYEE OF A PRIVATE CORPORATION WHICH WAS THE SUB-GRANTEE OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS, WAS NOT A "PUBLIC OFFICIAL" WITHIN THE MEANING OF SECTION 201(a).

Title 18 United States code § 201(a) defines "public official" to include an officer or employee, or a person acting for or on behalf of the United States or any department, agency, or branch of government thereof including the District of Columbia, in any official function, under or by authority of any such department, agency or branch of government.

This case turns on the question of whether petitioner was acting for or on behalf of the federal government. The Seventh Circuit below held that the extent of federal involvement in the block grant program was such that Hinton was acting on behalf of the United States in his administration of federal funds under the program.

Petitioner submits that the Seventh Circuit erred in holding that he was a "public official" because the basis of that Court's holding, federal involvement in the Community Development Block Grant Program, is an inappropriate test for determining petitioner's status as a "public official."

A.

A DIRECT AGENCY OR CONTRACTUAL RELATIONSHIP BETWEEN PETITIONER AND THE FEDERAL GOVERNMENT MUST BE PRESENT FOR PETITIONER TO BE A PERSON ACTING FOR OR ON BEHALF OF THE UNITED STATES PURSUANT TO § 201(a).

The current bribery statute, 18 U.S.C. § 201, was enacted in 1962 along with conflict of interest legislation found at 18 U.S.C. § 201-225. (Act of Oct. 23, 1962. Pub. L. 87-849 76 Stat. 1119). Prior to 1962, there were a number of different statutes in the federal code dealing with bribery. § 201 served to substitute a single comprehensive section proscribing the offense of bribery for these various statutes. Insofar as the bribery statute is concerned, Senate Report 2213 states in pertinent part:

> A secondary feature of the bill is substitution of a single comprehensive section of the criminal code for a number of existing statutes concerned with bribery. *This consolidation would make no significant changes of substance, and more particularly, would not restrict the broad scope of the present bribery statutes* as construed by the courts. S. Rep. No. 2213 87 Cong. 2nd Sess. reprinted in U.S. Code Cong. & Ad. News at 3853. (emphasis supplied).

The section by section analysis of § 201 contained in Senate Report 2213 states regarding § 201(a):

> The term "public official" is broadly defined to include officers and employees of the three branches of government, jurors and other persons carrying on activities for or on behalf of the government. U.S. Code Cong. & Ad. News at 3856.

In enacting § 201, it is clear Congress intended to codify the existing bribery statute and not to significantly change the manner in which the courts had been interpreting prior bribery laws. The enunciated objective of consolidating the bribery law into one statute, and the absence of any protracted discussion of the definition of "public official," indicates that Congress intended the bribery statute to embrace only the activities involving officials or employees of the federal government or their agents encompassed within the ordinary meaning of these terms.

The Senate Report specifically states the consolidation ". . . would not restrict the broad scope of the present bribery statutes as construed by the courts." At first glance, this statement sounds as though the bribery statute was intended to encompass a class of individuals beyond officers, employees or agents of the government. However, when the cases interpreting the current bribery statute and its predecessors are analyzed, it becomes clear that the courts have been mainly confronted with factual situations involving officers and employees of the government or their agents—fact situations which plainly do not involve the circumstances presented in the case at bar.

Judicial interpretations of the scope of prior bribery statutes are contained in *Becharias* v. *United States*, 208 F. 142 (7th Cir. 1913) immigration inspector; *Chiarovollotti* v. *United States*, 60 F.2d (7th Cir. 1932) federal prohibition agent; *Sears* v. *United States*, 264 F. 257 (1st Cir. 1920) material inspector maintained by federal government in a factory producing shoes for the Army; *Felder* v. *United States*, 9 F.2d 872 (2d Cir. 1925) attorney general or his assistants; *United States* v. *Haas*, 163 F. 908 (2d Cir. 1908) statistician for the Department of Agriculture; *United States* v. *Bordonaro*, 253 F. 477 (D.C.N.Y. 1918) member of a local draft board; *Nordgren* v. *United States*, 181 F.2d 718 (9th Cir. 1960) federal game warden; *United States* v. *Levine*, 129 F.2d 745 (2d Cir. 1942) employee of market administrator directly appointed by Secretary of Agriculture; *United States* v. *Kessel*, 62 F. 57 (D.C. Iowa 1898) physician appointed by the federal board of pensions; *Harlow* v. *United States*, 301 F.2d 361 (5th Cir. 1962) civilian employee of military post exchange; *Fulks* v. *United States*, 283 F.2d 259 (9th Cir. 1960) warehousemen on Air Force base.[1]

Cases defining the term "public official" under the current 18 U.S.C. § 201 include *United States* v. *Gallegos*, 510 F. Supp. 1112 (D.C.N.M. 1981) state employee working under direct supervision of federal employee in administration of grant program; *United States* v. *Hollingshead*, 672 F.2d 751 (9th Cir. 1982) employee of federal reserve bank; *United States* v. *Lumbowski*, 277 F. Supp. 713 (N.D. Ill. 1967) employee of Internal Revenue Service; *United States* v. *Kirby*, 587 F. 876 (7th Cir. 1978) grain inspectors licensed by U.S.D.A. and acting for that agency; *United States* v. *Griffin*, 401 F. Supp. 1227 (S.D. Ind. 1975) area management broker for HUD operating under a contract with that agency.[2]

All these cases indicate the bribery statute is directed at officers and employees of the federal government or their agents, and are authority for the proposition advanced here that a "public official" does not include the employee of a sub-grantee like petitioner Hinton.

With respect to the definition of the term "public official," the House Report on § 201(a) states:

> "Subsection (a).—'Public official' is given a comprehensive definition, covering all government officers and employees, including jurors. The term is then used in the substantive subsection to indicate those to whom the substantive provisions are applicable, thereby achieving a uniform application of the stat-

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[1] These cases are a representative sample of decisions interpreting the public official issue under prior statutes and do not represent an exhaustive list of all decisions under prior bribery laws.

[2] Two second Circuit cases which support petitioner's position, *United States* v. *Del Toro*, 513 F.2d 656 and *United States* v. *Loschiavo*, 531 F.2d 659, are dealt with in Part B of this brief.

ute to all persons acting for the government. The phrase—

> person acting for or on behalf of the United States, or any department, agency, or branch of government thereof, in any official function, under or by authority of any such department, agency, or branch of government—
>
> is used, as in the present sections 201 and 202, to include within the statutory coverage those persons who perform activities for the Government, as, for example, through a contractual arrangement. (See: *United States* v. *Levine*, 129 F.2d 745, for a judicial construction of the comparable language in the present law.)" *House Report 748*, "Bribery, Graft and Conflicts of Interest," House Reports, Vol. 5, H.R. 748, Bribery, Graft and Conflicts of Interest at pp. 15, 16, 1st Sess.

House Report 748 mandates the conclusion that Congress intended an agency or contractual relationship to be present in order for an individual to be ". . . acting for or on behalf of the United States." The House Report goes on to cite the case of *Levine* v. *United States*, 129 F.2d 745 (2d Cir. 1942) to illustrate what the above phrase means. *Levine* involved a bribery prosecution under the statute then in effect which made it a crime to bribe ". . . an officer of the United States or persons acting for or on behalf of the United States or of Congress in an official capacity." § 117 Cr. Code 18 U.S.C. § 207, 35 Stat. at L1109. Pursuant to the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture appointed a Market Administrator for the New York City area. The Market Administrator was also compensated and subject to removal by the Secretary. Defendant was employed by the Market Administrator. His duties consisted of receiving market surplus claims from milk handlers and checking them for accuracy. He was charged with accepting a bribe from a milk producer. Defendant contended that he was not a "public official" under the bribery statute. The Second Circuit held that as an employee of the Market Administrator, Levine was ". . . acting for or on behalf of the United States." 129 F.2d at 747.

By citing *Levine* in House Report 748, the drafters of § 201 demonstrates the type of relationship or nexus with the federal government that was necessary in order for a person to be ". . . acting for or on behalf of the United States." Levine's employer was appointed and compensated by the Secretary of Agriculture. There was a direct contractual relationship present between defendant's employer and the federal government. The Market Administrator and, therefore, the defendant were carrying out tasks delegated directly by the Secretary of Agriculture.

The factual situation in the instant case falls far short of the contractual circumstances presented in *Levine*, and therefore cannot be included in the term "public official" as intended by § 201 and those who drafted this statute. In the case at bar, there is no contractual relationship between the federal government and Hinton, or his employer, U.N.I. Petitioner was hired by U.N.I., and is answerable to that organization. The sole nexus between the federal government and petitioner consisted of federal funds which were present through the grant from the City of Peoria to U.N.I.

Criminal statutes, such as the bribery statute under review here, must be narrowly construed. The statute is ambiguous as to whether or not the conduct in question falls within its province; this ambiguity should and must be resolved in favor of the person charged. *Krichman* v. *United States*, 256 U.S. 263 (1922); *Rewis* v. *United States*, 401 U.S. 808 (1971); *United States* v. *Bass*, 404 U.S. 336 (1971).

In 1922, the United States Supreme Court in *Krichman* refused to include every person performing tasks for the government within the proscription of the bribery statute. The case involved a bribery prosecution, under § 39 of the Criminal Code, which made it clear to bribe ". . . any officer of the United States, or any person acting for or on behalf of the United States in any official function, under or by authority of any department of office of the government thereof." § 39 Crim. Code 25 Stat. at L1096. In 1917, pursuant to an Act of Congress, the President took possession and control of the nation's transportation systems. The railroads were controlled and operated by the Director of General Railroads. In *Krichman*, the defendant bribed a baggage porter employed by the Pennsylvania Railroad while it was under the control and being operated by the federal government. At issue was whether the porter was a person acting for or on behalf of the United States in an official function. The Court, through Mr. Justice Day, noted:

> The statute creating the offense was passed long before there was any thought of the government taking over the railroads. That does not prevent its application if the thing done offends against it. It is however a circumstance to be considered in determining whether the situation is one intended to be dealt with by Congress. (256 U.S. at 366)

The Court declined to recast the bribery statute from one embracing officials and those discharging official functions ". . . into one including every person discharging any sort of duty while the government is in control of the work." (256 at 367).

Holding that the baggage porter was not acting for or on behalf of the United States in an official function, the Court stated:

> While criminal statutes are to be given a reasonable construction, ambiguities are not to be solved so as to embrace offenses not clearly within the law. We are unable to remedy the uncertainties of this statute by attributing to Congress an intention to include a baggage porter with those who discharge official duties in the operation of a railroad controlled by an officer of the government. (256 U.S. at 367, 368).

Rewis involved a prosecution under the Travel Act 18 U.S.C. § 1952, which prohibited interstate travel in furtherance of criminal activity. The defendants ran a gambling operation near the Florida state line which was frequented by out-of-state bettors. Defendants themselves never crossed state lines in furtherance of their operation. The Court held that conducting a gambling operation frequented by out-of-state bettors, without more, does not constitute a violation of the Travel Act. The Court noted that the legislative history of the Act, although limited, indicated that § 1952 ". . . was aimed at organized crime and more specifically, at persons who reside in one state while operating or managing illegal activities located in another." (401 U.S. at 811).

The Court concluded that even if more support for an expansive reading of the statute was present, ". . . ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." (401 U.S. at 812).

In *Bass*, defendant was convicted of possessing firearms in violation of 18 U.S.C. § 1202(a)(1) which provides that a person convicted of a felony ". . . who receives, possesses or transports in commerce or affecting commerce . . . any firearm . . ." should be punished as prescribed therein. The Court held that it was not clear from the language and legislative history of § 1202(a)(1) whether or not receipt or possession of a firearm by a convicted felon had to be connected with interstate commerce, and, therefore, the ambiguity must be resolved in favor of the narrower reading that a nexus with interstate commerce must be shown with respect to all three offenses contained in § 1202(a)(1).

The rules enunciated by the Court in *Krichman, Bass*, and *Rewis* should be applied in this case; and any ambiguity as to the class of persons ". . . acting for or on behalf of the United States," must be resolved in favor of a narrow reading. That class should be restricted to those persons specifically contemplated by Congress as evidenced by the statute and its legislative history—namely, persons with a direct contractual or agency relationship with the federal government.

In sum, petitioner insists that a proper analysis of the statute requires this Court to hold that 18 U.S.C. § 201(a) can only encompass officers and employees of the federal government, or those individuals performing activities for the government pursuant to a contractual or direct agency relationship.

B.

PETITIONER WAS NOT AN OFFICIAL OR AN EMPLOYEE OF THE FEDERAL GOVERNMENT AND WAS NOT ACTING FOR OR ON BEHALF OF THE UNITED STATES AS A RESULT OF THE INVOLVEMENT OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT AND ITS ACCOMPANYING REGULATIONS.

The Seventh Circuit held that because the Housing and Community Development Act was involved, the petitioner became an agent of the United States, and was thus acting for or on behalf of the United States causing petitioner to fall within the confines of § 201. This holding by the Seventh Circuit is absolutely incorrect.

An analysis of the Housing and Community Development Act and the relationship between HUD, the City of

Peoria, U.N.I., and petitioner compels the conclusion that petitioner was not acting for or on behalf of the federal government. The Community Development Block Grant funds given to the City of Peoria were authorized by the Housing and Community Development Act of 1974. 42 U.S.C. § 5301-5320 (Supp. III. 1979).

The primary purpose of the Act is to develop viable urban communities by providing decent housing and expanding economic opportunity for persons of low and moderate incomes. Federal assistance is to be provided to support community development activities which are directed at specific objectives. 42 U.S.C. § 5301(c). Another purpose of the Act is to ". . . further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance of varying sizes and needs into a consistent system of federal aid . . ." 42 U.S.C. § 5301(d). The Act authorizes the Secretary of the Department of Housing and Urban Development to make grants to states, cities and other units of local government, to be used in the manner consistent with the objectives of the Act, 42 U.S.C. § 5303. In order to be eligible for the block grant funds, the recipient must file with the Secretary of HUD a statement of objectives and a projected use of the grant funds. 42 U.S.C. § 5304. Once the recipient's plan is met with the Secretary's approval, implementation of the plan is the responsibility of the recipient. 42 U.S.C. § 5303. The Act further provides that once the funds are received, the City or other unit of local government may provide that its plan be implemented by granting funds to a local, non-profit community organization. 42 U.S.C. § 5303(15) 24 CFR 570.204(a). However in such a case, the recipient still bears ultimate responsibility for ensuring that the grant funds are utilized in a manner consistent with the recipient's objectives. 24 CFR 570.204(b).

Once the City received the Community Development Block Grant funds, it had the obligation of utilizing the funds consistent with the purpose of the Act and its own statement of objectives. Peoria had the option of administering the grant funds itself, or it could make grants to a local organization which would then spend the money in accordance with the City's objectives. Moreover, the choice of which local non-profit organization was to receive the grants was left to the City. It is clear that the City functioned under the Act as more than a mere conduit for federal funds. The City's function was to seek implementation of its statement of objectives, and it used the federal funds for this purpose. In this case, Peoria chose to contract with U.N.I. to administer the grant funds through a housing rehabilitation program. The contracts between the City of Peoria and U.N.I. revealed that U.N.I. was acting for the City of Peoria and carrying out the City's obligation. Each contract between the City and U.N.I. provided in part:

> Whereas the services and programs developed, operated and administered by U.N.I. benefit the people of the City of Peoria;
>
> Whereas U.N.I. provides needed services which might otherwise become direct or indirect obligations of the City of Peoria; . . . (J.A. 41, 50 54, 61, and 65).

This language is consistent with the HUD regulation on sub-grantees. Analysis of 24 CFR 570.204 makes it clear that the sub-grantee is acting on behalf of the recipient. It provides:

> "General grant assistance may be used by applicants to provide block grant funds for *activities designed to implement the applicant's strategies for economic development and neighborhood revitalization* set forth in this section to be carried out by a non-profit

> entity, a neighborhood based non-profit organization, local development corporation or Small Business Investment Company (SBIC)." (emphasis added).

The Seventh Circuit below held that Hinton was a "public official" based on the extent of the federal involvement in the Community Development Block Grant program. (J.A. 79) It is true that the statute and its regulations provide for federal supervision and monitoring of the block grant program. The type of federal involvement the Seventh Circuit found present in the block grant program will be present whenever federal funds are involved. However, the federal control provided for does not change the relationships and duties as defined by the Act. The Secretary's function under the Act is to approve a recipient's plan or statement of objectives, grant the Community Development Block Grant funds to the recipient unit of local government, issue regulations and guidelines, and terminate or withhold grant funds upon making certain findings. The function of the City was to administer the funds consistent with its own plan. The function of U.N.I. was to perform tasks delegated to it by the City of Peoria.

The record in this case disclosed that HUD in fact exercised minimal supervision once the grant funds were given to the City of Peoria. (R.108-117) Further, HUD had no contact at all with the sub-grantee, U.N.I. (R.114) The City of Peoria clearly delegated its function or obligation to U.N.I. Mr. Hinton was employed by U.N.I. which was implementing the City's strategies for community development. U.N.I. through its employees was discharging a City and not a federal function. Mr. Hinton was not employed as a substitute for a federal employee, nor was he employed for purposes of federal convenience. Therefore, Mr. Hinton was not acting for or on behalf of the Department of Housing and Urban Development. At most he was acting on behalf of the City and performing the City's responsibilities under the Act.

The Seventh Circuit found support for its holding in the fact that the salaries of the petitioner and the costs of the rehabilitation program were funded by the federal government for federal objectives. This overlooks the fact that petitioner was employed by U.N.I. He was hired by that organization and was supervised by the U.N.I. board of directors. (R.165) While the ultimate source of Hinton's salary was the grant funds, he could only look to U.N.I. for his paycheck and not the federal government. Further, while the federal objectives are clearly expressed in the Act, these are the broad objectives concerning the development of viable urban communities. 42 U.S.C. § 5301. The City of Peoria had objectives also which were met in part by the U.N.I. housing rehabilitation program.

The Second Circuit has defined "public official" within the meaning of § 201(a) in the cases of *United States* v. *Del Toro,* 513 F.2d 656 (2d Cir. 1975), *cert den.* 423 U.S. 826 and *United States* v. *Loschiavo,* 531 F.2d 659 (2d Cir. 1976). Both cases involved bribery of the same assistant administrator of the Model Cities program in New York City.

In *Del Toro,* the defendants were charged and convicted, *inter alia,* with bribing a "public official" in violation of 18 U.S.C. § 201(b). The evidence showed that Del Toro and Kaufman had conspired to bribe one Pedro Morales, an assistant administrator of the Harlem Model Cities program. Kaufman, a lawyer and real estate broker, hoped Morales would use his influence to secure Kaufman a lease with Model Cities for a significant amount of office space for which Kaufman was the rental agent—

thus earning Kaufman a sizeable commission. Del Toro was the middle man in the transaction. Morales was a City employee. His salary was paid by the City of New York but with moneys advanced by the federal government through a grant to the City. Federal involvement was present through regulation and supervision of the Model Cities program by HUD.

The Second Circuit reversed the convictions, holding that Morales was not a "public official" within the meaning of § 201(a). The Court emphasized the modifying phrase of § 201(a) "public official" definition—the person must act ". . . under or by authority of any such department, agency or branch of federal government." (513 F.2d at 622).

Since Morales was a city employee, carrying out tasks delegated to him by his superior, another City employee, he was not acting "under or by authority of any such department, agency or branch of the federal government." Therefore, he was not a "public official" under § 201(a). The fact that the federal government financed the Model Cities program and HUD supervised Model Cities activities was not dispositive as the Court stated:

> In view of the enormous amount of funding by the federal Government on a broad spectrum which includes welfare, housing, and health, we are constrained to take a close look at the determination below and the effect of bringing clearly illegal conduct under state law within the ambit of the federal jurisdiction. (513 F.2d at 662).

In *Loschiavo*, the Second Circuit, in reaffirming *Del Toro*, enunciated the test for determining status as a "public official." It is not the type of federal project or amount of federal funding but rather, ". . . character and attributes of his employment relationship, if any, with the federal government." (531 F.2d at 661).

Thus, the Second Circuit has correctly recognized that it is not federal involvement in a particular program, but an individual's relationship to the federal government, that is determinative of status under § 201(a). In analyzing the character and attributes of petitioner's relationship with the federal government, it is apparent that, as an employee of U.N.I., Hinton was carrying out tasks delegated by the City of Peoria. He had no connection whatsoever with the federal government.

The Seventh Circuit below relied on its prior decision in *United States* v. *Mosley*, 659 F.2d 812 (1981) in concluding that petitioner was a "public official." In *Mosley*, the defendant was convicted of soliciting and receiving money in exchange for giving preferential treatment to certain individuals seeking jobs under the Comprehensive Employment and Training Programs Act, 29 U.S.C. § 801, *et seq*. (CETA). Mosley was employed in Chicago, Illinois as a CETA intake and eligibility officer by the State of Illinois Bureau of Employment Security (IBES).

The Seventh Circuit held that the provisions and history of the CETA program manifested a substantial amount of federal involvement sufficient to warrant a finding that Mosley was a "public official" acting for or on behalf of the United States Department of Labor.

Mosley should have no applicability to the present case for two reasons. First the "federal involvement" found present in *Mosley* simply does not exist in this case. U.N.I. was selected by the City of Peoria to administer grant funds through the U.N.I. housing program. The Department of Housing and Urban Development had absolutely nothing to with U.N.I. or its housing programs. (R.114) This is typified by the fact that James Barnes, the HUD official in charge of block grants to the City of Peoria, neither knew or had a duty to know of the existence of U.N.I. or Hinton. (R.116) Second, the "federal involvement" test enunciated in *Mosley* is inappropriate because there will always be federal involvement to some extent whenever federal funds are involved. Carrying *Mosley* to its logical conclusion, anyone acting in a federally funded program could be said to be "a person acting for or on behalf of the United States." This expansive definition of the term "public official" is totally unsupported by the reading of the statute and legislative history.

Petitioner Hinton urges this Court to reject the holding of the Seventh Circuit, and reverse the petitioner's conviction under 18 U.S.C. § 201(c).

§ 201(a), when considered in light of its legislative history, judicial interpretations of the statute, and a plain reading of the statute itself, affords no other conclusion but that a "public official" must be either an officer or employee of the federal government, or possess a direct agency or contractual relationship with the federal government. And as set out in this brief, the facts show Hinton's conduct and relationship to the federal government in no manner falls within the proper definition of a "public official." The Seventh Circuit simply misdefined the concept of a "public official," and accordingly erred in affirming petitioner's conviction.

CONCLUSION

For the reasons stated herein, the judgment of the Seventh Circuit Court of Appeals should be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1982

ARTHUR DIXSON, PETITIONER
v.
UNITED STATES OF AMERICA

JAMES LEE HINTON, PETITIONER
v.
UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether petitioners, officers of a nonprofit urban development corporation administering and expending federal housing rehabilitation grants, were "person[s] acting for or on behalf of the United States, or any department, agency or branch of Government thereof, * * * in any official function, under or by authority of any such department, agency, or branch of Government" (18 U.S.C. 201(a)), and were therefore correctly found guilty of violating the federal bribery statute (18 U.S.C. 201(c)) for accepting payments in return for letting rehabilitation contracts.

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In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-5279

ARTHUR DIXSON, PETITIONER

v.

UNITED STATES OF AMERICA

No. 82-5331

JAMES LEE HINTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (J.A. 75-84)[1] is reported at 683 F.2d 195.

JURISDICTION

The judgment of the court of appeals was entered on July 8, 1982. The petition for a writ of certiorari in No. 82-5279 was filed on August 24, 1982, and the petition in No. 82-5331 was filed on August 31, 1982. Both petitions for a writ of certiorari were granted on December 13, 1982 (J.A. 85-86). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

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[1] "J.A." refers to the joint appendix filed in this Court.

STATUTE INVOLVED

18 U.S.C. 201 provides, in pertinent part:

> (a) For the purpose of this section: "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commisioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;
>
> * * * * *
>
> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
>
> > (1) being influenced in his performance of any official act;
>
> * * * * *
>
> Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

STATEMENT

Petitioners were indicted in the United States District Court for the Central District of Illinois on eleven counts of soliciting and receiving money in exchange for the award of housing rehabilitation contracts funded by the United States Department of Housing and Urban Development (HUD), in violation of 18 U.S.C. 201(c)(1). Following a jury trial, petitioners were convicted as charged and each was sentenced to a term of 7½ years' imprisonment to be followed by three years' probation (J.A. 3-8, 23, 24).[2]

1. The Housing and Community Development Act of 1974, 42 U.S.C. (& Supp. IV) 5301 *et seq.*, provides federal funding to state and local governments for "the development of viable urban communities." 42 U.S.C. (& Supp. IV) 5301(c). The Act gives the Secretary of Housing and Urban Development power to dispense community development block grants to be used for specified activities (42 U.S.C. (& Supp. IV) 5305), including rehabilitation of residential structures and related public works projects (J.A. 25-26, 31-32). The Act authorizes state and local governments to designate community associations and other entities approved by the Secretary to be administrators of the grant funds (42 U.S.C. (& Supp. IV) 5302(a), (c)). Regulations promulgated by the Secretary permit state and local governments to delegate the administration of grant funds to neighborhood-based, nonprofit corporations (24 C.F.R. 570.204).

The Act calls for substantial federal supervision of the local governments and nonprofit corporations responsible for the administration of grant funds (J.A. 78-79). It requires the submission of a comprehensive three-year community development plan, as well as implementation and housing assistance plans, prior to the award of funds (42 U.S.C. (& Supp. IV) 5304); and it describes in detail the activities that are eligible for funding under community development plans.[3] 42 U.S.C. (& Supp. IV) 5305. Further, there are extensive HUD regulations governing community development block grant procedures, program design, management, and administration. See generally 24 C.F.R. Part 570. Section 570.204, for example, governs eligible activities by private nonprofit entities.[4] Other regulations govern the procurement of services and materials by grantees and subgrantees (24 C.F.R. 570.507), and set forth the records and reports that must be prepared and made available for HUD inspection (24 C.F.R. 570.900-570.913).[5] The Secretary of HUD or the Comptroller General of the United States may examine and audit all books, accounts, records, reports, files or other papers of grantees or subgrantees. 42 U.S.C. (Supp. IV) 5304(d); 24 C.F.R. 570.509.

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[2] Petitioner Hinton was charged in Counts I-VI and VIII-XI with soliciting and receiving bribes in violation of 18 U.S.C. 201(c). He was sentenced to 7½ years' imprisonment on Counts I-VI, to be followed by three years' probation on Counts VIII-XI (J.A. 3-8, 24). Petitioner Dixson was charged in Counts I-VII, X and XI with soliciting and receiving bribes in violation of 18 U.S.C. 201(c), and was sentenced to 7½ years' imprisonment on Counts I-VII, to be followed by three years' probation on Counts X and XI (J.A. 3-8, 23). Execution of sentence was suspended pending appeal (J.A. 23, 24).

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[3] The Act, *inter alia*, authorizes grant funds to be used for the rehabilitation of blighted or deteriorating public facilities, the construction of centers for the handicapped, the clearance, demolition, removal and rehabilitation of buildings and improvements, and the financing of rehabilitation efforts on privately owned properties when incidental to other activities. 42 U.S.C. (& Supp. IV) 5305.

[4] Private nonprofit entities may acquire and rehabilitate blighted or deteriorating public facilities, construct centers for the handicapped, rehabilitate public and private residential structures, and finance the rehabilitation of privately owned structures. 24 C.F.R. 570.204(b). See also 24 C.F.R. 570.201-570.203.

[5] 24 C.F.R. 570.900 sets forth "performance standards" against which the Secretary of HUD measures a grantee's or subgrantee's compliance with the specific requirements of the Act and its implementing regulations. 24 C.F.R. 570.905 requires preparation of financial management reports, relocation and acquisition reports, equal opportunity reports, and any other report required by the Secretary. Other regulations prescribe how these reports will be maintained by grantees and examined by HUD. 24 C.F.R. 570.907-570.909. Following agency review of these reports to determine whether a grantee or subgrantee "has carried out a program substantially as described in its application" in compliance with the "requirements of the Act" and "other applicable laws and regulations" (24 C.F.R. 570.909(a)), HUD may take corrective and remedial actions that include seeking reimbursement for any funds improperly expended, reducing or withdrawing a grant, or referring a matter to the Attorney General for appropriate mandatory or injunctive relief. 24 C.F.R. 570.910-570.913.

In addition to these general reporting and oversight requirements, a broad range of substantive federal laws govern applicants for funds under the Housing and Community Development Act of 1974. The chief executive officer of a grantee must, for example, consent to "assume the status of a responsible Federal official under the National Environmental Protection Act of 1969 [42 U.S.C. 4321 *et seq.*]," and is required to accept federal jurisdiction "for the purpose and enforcement of his responsibilities as such an official." 42 U.S.C. (Supp. IV) 5304(h)(3)(D). Fund recipients are required to comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5),[6] and are prohibited from denying anyone the benefits of participation in a housing program on the basis of race, color, national origin, or sex. 42 U.S.C. 5309, 5310. Regulations promulgated by the Secretary of HUD require grantees and subgrantees to comply with the Archeological and Historic Preservation Act of 1974 (Pub. L. No. 93-291, 88 Stat. 174 *et seq.*), the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*), the Hatch Act (5 U.S.C. 7324), the Flood Disaster Protection Act of 1973 (Pub. L. No. 93-234, 87 Stat. 975), the Clean Air Act (42 U.S.C. 1857 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. (& Supp. IV) 1251 *et seq.*), and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 *et seq.*). 24 C.F.R. 570.604-570.611. The Secretary of HUD is authorized to terminate, reduce, or limit funding for failure to comply with any of these requirements. 42 U.S.C. 5311.

2. Evidence presented at trial established that during 1979 and 1980, the City of Peoria, Illinois, received a community development block grant and a metro reallocated grant[7] totalling approximately $1.1 million from the United States Department of Housing and Urban Development. The grants were funded under the Housing and Community

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[6] The Davis Bacon Act, 40 U.S.C. 276a to 276a-5, requires government contractors to pay laborers and mechanics the prevailing wage rate in their particular locale.

[7] Metro reallocated grants are paid out of funds appropriated for, but not utilized by, the community development block grant program (J.A. 26).

Development Act of 1974. In accordance with the Act (42 U.S.C. (& Supp. IV) 5302(a), (c)) and its implementing regulations (24 C.F.R. 570.204), the city contracted with a community-based, not-for-profit corporation, United Neighborhoods, Inc. (UNI), to administer the funds awarded to Peoria (J.A. 26-27, 41-64, 70-72). UNI proposed to administer the funds in "a joint effort with the City of Peoria to achieve the common goals as set forth in the Housing and Community Development Act to insure safe, sanitary and decent housing for all people" (Gov't Exh. 19 at 2). Petitioner Dixson was the Executive Director of UNI, and petitioner Hinton was its Housing Rehabilitation Coordinator (J.A. 75).

The grant program administered by UNI was funded in its entirety by federal appropriations and federal funds paid all of UNI's costs and the salaries of its employees (including the salaries of the two petitioners) (42 U.S.C. (& Supp. IV) 5305(a)(13); 24 C.F.R. 570.206; J.A. 41-64, 70-72). UNI's responsibilities included soliciting bids and awarding contracts for the rehabilitation of eligible housing. At various stages during a rehabilitation project, participating contractors were paid by UNI with federal funds the corporation received from the city (J.A. 26-28, 31-35). UNI was thus a "subgrantee" of HUD funds, while the city of Peoria acted as a "liaison" between HUD and UNI (J.A. 27, 33).[8]

Two contractors who received housing rehabilitation contracts from UNI testified that petitioners Dixson and Hinton solicited money in exchange for awarding them contracts.[9] One contractor received rehabilitation contracts for ten homes after agreeing to pay petitioners ten percent of the amount of each contract. The contractor paid petitioners after cashing the checks he received periodically from UNI as rehabilitation work progressed (Tr. 139-145, 165-189, 220-223).[10] A second contractor was told by petitioner Dixson that he would receive a contract in return for a ten percent payment. Petitioners thereafter told the contractor which houses to bid on, recommended that the amount of one bid be lowered, and collected payment in cash after the contractor received his check from UNI (Tr. 77-83, 92, 95, 100, 104, 106). The bribes solicited and received by petitioners in this manner totalled $42,694.03 (Tr. 81-83, 92, 95, 173-177; Gov't Exhs. 1-11, 23).[11]

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[8] UNI accounted to the city for its expenditure of grant funds, and the city accounted to HUD for all federal funds received under the Housing and Community Development Act of 1974 (42 U.S.C. (Supp. IV) 5304(d); Gov't Exh. 13; J.A. 27, 32-33, 41-64, 70-72). Contrary to the assertion of petitioner Dixson (82-5279 Br. 5-6), the grants administered by UNI were audited in early 1980. The audit report, by Arthur Andersen & Co. and dated April 10, 1980, stated that the examination "was made in accordance with * * * provisions of the Department of Housing and Urban Development's *Audit Guide and Standards for Community Development Block Grant Recipients*" (Gov't Exh. 12 at 1).

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[9] The Housing Committee of UNI was responsible for awarding contracts to successful bidders. In spite of the committee's formal responsibility for this function, however, contracts were awarded without committee approval (Tr. 226-228; J.A. 39). Petitioner Hinton in fact told one contractor that submitting the bids to the Housing Committee was just a formality (Tr. 79, 106).

[10] All payments to petitioners were made in cash in various locations, such as in the men's restroom and underneath the fire escape at UNI headquarters, in petitioner Dixson's house, in petitioner Hinton's apartment, and in the parking lot outside a bank where a contractor had just cashed a check drawn on UNI's account (Tr. 184, 190).

[11] UNI's amended grant agreement with the City of Peoria expressly requires compliance with the Copeland Anti-Kickback Act, 18 U.S.C. 874 (J.A. 71). That statute provides as follows (18 U.S.C. 874):

> Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Although the express wording of the statute would seem to reach the conduct of petitioners in this case, the statute has been restrictively construed. In *United States* v. *Carbone*, 327 U.S. 633, 637 (1946), this Court found that the statute was designed to protect the wages that laborers are entitled to receive under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.*, reasoning that the statute must be "read and applied in light of the evils which gave rise to [it] and the aims which the propo-

At the conclusion of the evidence, the trial court instructed the jury that the government was required to prove "[t]hree essential elements" under 18 U.S.C. 201(c) (J.A. 40). First, the government must show that the petitioners had directly or indirectly solicited, exacted, accepted, or agreed to receive a sum of money; second, that they had done this "corruptly while a public official;" and third, that they had performed the proscribed "acts with the intent to be influenced in their performance of an official act in respect to the awarding of housing rehabilitation contracts" (J.A. 40). The court instructed the jury that 18 U.S.C. 201(a) "defines the term 'public official' to include an officer or employee or person acting for or on behalf of the United States in any official function, under or by authority of any department, agency or branch of government" (J.A. 40). "Official act" was likewise defined by the court as "any decision or action on any question, matter, proceeding or controversy which may at any time be pending or which may by law be brought before any public official in his official capacity" (*ibid.*). The jury found petitioners guilty as charged.

3. The court of appeals unanimously affirmed petitioners' convictions (J.A. 75-84). The court rejected petitioners' contention that they were not "public officials" within the meaning of 18 U.S.C. 201(a). It held that the "substantial federal supervision" of UNI's administration of community development block grant funds together with petitioners' "positions within the program" established that they were persons "acting for or on behalf of the United States or any department, agency, or branch of Government thereof" (J.A. 78-80).

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nents sought to achieve." Thus, the statute applies to laborers on federally financed construction projects, to prevent kickbacks of a portion of their wages to their employers. 327 U.S. at 638-642. The First Circuit has concluded that the statute's application is *limited* to this purpose, holding that the statute cannot be applied to payments made by contractors for the award of housing contracts under a HUD rehabilitation program. *Slater* v. *United States*, 562 F.2d 58, 59-62 (1st Cir. 1976).

The court rejected petitioners' assertion that 18 U.S.C. 201(a) reaches only those persons employed by the federal government (J.A. 80). The court held that "[t]he extent of federal involvement [in the community development block grant program] is such that [petitioners] were acting on behalf of the United States in their administration of the federal funds under the program" (J.A. 79). The court noted that although "the federal funds flow from the local sponsor to the recipient of a contract rather than directly from the agency * * * the purpose of this procedure [is] to streamline the funding process rather than to abdicate federal control over the substantive aspects of the program" (*ibid.*). Moreover, "[t]he salaries of [petitioners] and the entire cost of the program they administered were funded by the federal government for federal objectives," and petitioners were therefore "acting as federal agents in the sense of having discretion in administering the expenditure of federal funds" (J.A. 80). The court concluded that because petitioners "had the authority and power to influence or control the dispersal of federal funds on behalf of HUD," they qualified "as 'public officials' within the meaning of section 201(c)" (J.A. 81-82, footnote omitted).

The court of appeals found support for its holding in two earlier Seventh Circuit decisions: *United States* v. *Mosley*, 659 F.2d 812 (1981),[12] and *United States* v. *Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), aff'd without opinion *sub. nom. United States* v. *Metro Management Corp.*, 541 F.2d

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[12] In *Mosley*, the court upheld the conviction under 18 U.S.C. 201(g) of an intake and eligibility officer employed by the State of Illinois under the Comprehensive Employment and Training Act of 1973 (CETA), 29 U.S.C. 801 *et seq.* The defendant in *Mosley* solicited payments from applicants in return for federally funded CETA jobs (659 F.2d at 813). The *Mosley* court relied upon the extensive federal supervision of the CETA program (*id.* at 814-815) and noted that the defendant's "referals were successful in obtaining jobs for those who paid the bribe" (*id.* at 816). The defendant, therefore, was "authorizing the expenditure of federal funds *himself*" (*ibid.*, emphasis in original). The court held that the fact that the defendant was a state employee did not prevent application of 18 U.S.C. 201(g) to his misdeeds because he was "acting 'on behalf' of the federal Government" within the meaning of the statute (659 F.2d at 816).

284 (1976).[13] The court of appeals distinguished two decisions of the Second Circuit (*United States* v. *Loschiavo*, 531 F.2d 659 (1976), and *United States* v. *Del Toro*, 513 F.2d 656, cert. denied, 423 U.S. 826 (1975)), concluding that the federal involvement in the program at issue in this case "differs significantly" from the housing program examined in the Second Circuit cases (J.A. 78).

SUMMARY OF ARGUMENT

1. Section 201(a) defines a "public official" as any "person acting for or on behalf of the United States * * * in any official function" (18 U.S.C. 201(a)). The plain language of the statute, therefore, refutes petitioners' argument that Congress limited Section 201(a) to persons having a "direct agency or contractual relationship" with the federal government (82-5331 Br. 7). To the contrary, the statute clearly extends to persons administering federally sponsored activities authorized by statute, regulation, contract, or agreement—whether or not those persons have some employment relationship with the United States. In the face of the sweeping language of Section 201(a), this Court should not construe the statute to exclude any person or conduct fairly encompassed by it (*Lewis* v. *United States*, 445 U.S. 55, 60-61 (1980); *United States* v. *Culbert*, 435 U.S. 371, 373 (1978)).

2. The legislative history of 18 U.S.C. 201(a) demonstrates that the statute reaches persons administering fed-

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[13] The court of appeals in *United States* v. *Metro Management Corp.*, *supra*, upheld the conviction under 18 U.S.C. 201(c) of a principal officer and agent of a corporation that had been awarded an area management broker contract by HUD. In return for a ten percent payment, the defendant had submitted bids on housing contracts to HUD for agency approval. The defendant had argued before the district court that because the bids were actually accepted by HUD, application of the federal bribery statute to him was improper. The district court rejected the argument, noting that the defendant was "enabled to exercise discretion to act for and on behalf of HUD in operating the system" (401 F. Supp. at 1230). The fact that the defedant was an employee of a private corporation "and not of the United States does not prevent him from acting as a 'public official' as defined in 18 U.S.C. § 201(a)" (401 F.Supp. at 1230).

erally sponsored and supervised programs. The scope of federal bribery law has expanded in step with the increasing size and complexity of the federal government. Whereas the first federal bribery statute proscribed only the bribery of judges (Act of Apr. 15, 1790, ch. 9, § 21, 1 Stat. 117), by 1948 Congress had enacted statutes that "embrace[d] all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations" (H.R. Rep. No. 304, 80th Cong., 1st Sess. A14-A15 (1947)). The comprehensive bribery statute at issue in this case was enacted in 1962, and was expressly designed to include "within the statutory coverage those persons who perform activities for the Government" (H.R. Rep. No. 748, 87th Cong., 1st Sess. 17-18 (1961)). Congress, moreover, rejected proposed legislation that would have limited the coverage of 18 U.S.C. 201 solely to officers, agents, or employees of the United States (see, *e.g.*, H.R. 3411, 87th Cong., 1st Sess. (1961)). Congress, therefore, has asserted its intention in 18 U.S.C. 201(a) to deal comprehensively with bribery in connection with the administration of federal programs. It should not be required to graft new language onto the statute each time the growth of federal agencies and programs results in a new delegation of administrative duties to new sorts of persons "carrying on activities for or on behalf of the Government" (S. Rep. No. 2213, 87th Cong., 2d Sess. 8 (1962)).

Consistent with this legislative intent, most federal district and appellate courts have concluded that persons exercising powers authorized by federal statute, regulation, contract, or agreement as part of a federally sponsored, supervised, and funded program are "acting for or on behalf of the United States" within the meaning of Section 201(a). Courts have found that the federal bribery statute applies to the bribery of a federal reserve bank employee (*United States* v. *Hollingshead*, 672 F.2d 751 (9th Cir. 1982)), a state social service eligibility worker (*United States* v. *Mosley*, 659 F.2d 812 (7th Cir. 1981)), privately employed grain inspectors (*United States* v. *Kirby*, 587 F.2d 876 (7th Cir. 1978)), and private employees of the military post exchange system (*Harlow* v. *United States*, 301 F.2d 361 (5th

Cir.), cert. denied, 371 U.S. 814 (1962)). In light of these precedents, petitioners' responsibilities as administrators of a federally funded housing program plainly bring them within the purview of 18 U.S.C. 201(c). The Second Circuit cases giving the statute a woodenly restricted reading (*United States* v. *Del Toro*, 513 F.2d 656, cert. denied, 423 U.S. 826 (1975); *United States* v. *Loschiavo*, 531 F.2d 659 (1976)), are contrary to the weight of judicial authority and are inconsistent with the language and legislative history of 18 U.S.C. 201(a).

3. Extensive federal involvement in the housing program administered by petitioners compels the conclusion that they are "public officials" under 18 U.S.C. 201(a). UNI's housing rehabilitation program was not merely "a local project to accomplish local objectives" (82-5279 Br. 17), but rather was part of a nation-wide effort to achieve "essential national goals and objectives" (H.R. Rep. No. 93-1114, 93d Cong., 2d Sess. 6 (1974)). To insure that "nationally-established objectives are being met in a reasonable manner" (H.R. Rep. No. 93-1114, *supra*, at 8), Congress created extensive "executive oversight" of locally administered housing programs (S. Rep. No. 93-693, 93d Cong., 2d Sess. 55 (1974)). Thus, local housing development programs must comply with detailed federal planning, implementation and reporting requirements (42 U.S.C. (& Supp. IV) 5304, 5305), and are subject to a broad range of federal substantive laws (42 U.S.C. (& Supp. IV) 5304(h), 5309-5310). This extensive federal supervision demonstrates that the housing rehabilitation program operated by United Neighborhoods, Inc., was undeniably conducted "under or by authority of" a federal "department" within the meaning of Section 201(a). Petitioners' positions within that program, moreover, show that they were persons "acting for or on behalf of the United States" (18 U.S.C. 201(a)). Petitioners possessed and exercised the authority to award federal housing rehabilitation grants to contractors who paid them a ten percent bribe. The court of appeals was therefore correct in concluding that petitioners "were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds" (J.A. 80).

4. The federal government has a strong and legitimate interest in prosecuting petitioners for their misuse of government funds. There is no reason why corruption in the dispensing of federal funds should be insulated from the application of federal criminal law solely because state and local officials are used as intermediaries in the distribution of those funds. Section 201(a) is cast in broad terms precisely in order to include all those "carrying on activities for or on behalf of the Government" (S. Rep. No. 2213, *supra*, at 8). Considerations of comity and federalism are therefore irrelevant here and do not point toward a restrictive interpretation of 18 U.S.C. 201(a). The statute's clear language gave petitioners ample warning that their conduct was prohibited, and application of the statute to that conduct would further its central purposes.

ARGUMENT

AS OFFICERS OF A QUASI-PUBLIC CORPORATION ADMINISTERING FEDERAL HOUSING REHABILITATION GRANTS, PETITIONERS ARE "PUBLIC OFFICIALS" WITHIN THE MEANING OF THE FEDERAL BRIBERY STATUTE, 18 U.S.C. 201(a)

Petitioners assert that they do not come within the purview of the federal bribery statute, 18 U.S.C. 201(a), because they were employees of United Neighborhoods, Inc., and lacked any employment relationship with the federal government (82-5279 Br. 11-13; 82-5331 Br. 7-8). This argument ignores the sweeping language of 18 U.S.C. 201(a), its legislative history, the extent of the federal involvement in the housing program administered by petitioners, and the strong interest of the federal government in prosecuting petitioners for their corrupt administration of government funds. A reasoned consideration of these factors compels affirmance of the decision below.

A. The Plain Language Of The Federal Bribery Statute Includes Petitioners Within Its Reach

This Court has repeatedly stated that the "starting point in every case involving the construction of a statute is the language itself." *Southeastern Community College* v.

Davis, 442 U.S. 397, 405 (1979), quoting *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring); *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 337-338 (1979). If "statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.'" *United States* v. *Turkette*, 452 U.S. 576, 580 (1981); *Rubin* v. *United States*, 449 U.S. 424, 429-431 & n.8 (1981); *Lewis* v. *United States*, 445 U.S. 55, 60 (1980); *United States* v. *Naftalin*, 441 U.S 768, 772-774 (1979); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820). In this case, the plain language of 18 U.S.C. 201(a) refutes petitioners' argument that they are not public officials.

The federal bribery statute provides that it is a felony for "any * * * public official" to "directly or indirectly" ask, demand, exact, solicit, seek, accept, receive, or agree to receive "any thing of value" in return for being influenced in the performance of "any official act," or for committing a fraud on the United States or violating any official duty. 18 U.S.C. 201(c).[14] The statute broadly defines "public official" to include "an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, in any official function, under or by authority of any such department, agency, or branch of Government." 18 U.S.C. 201(a).[15]

The federal bribery statute is remarkable because "[t]he statutory language is sweeping" (*Lewis* v. *United States*, *supra*, 445 U.S. at 60). Indeed, as the First Circuit noted in construing a direct predecessor to 18 U.S.C. 201(a), "it is quite striking how many broadening words are used in the statute." *Wilson* v. *United States*, 230 F.2d 521, 524, cert. denied, 351 U.S. 931 (1956). Congress included no limiting modifier in the statute to restrict bribery prosecutions to persons having an employment relationship with the federal government. To the contrary, the terms of the statute expressly reach any "officer *or* employee *or* person acting for or on behalf of the United States, or *any* department, agency, or branch of Government thereof, in *any* official function" (18 U.S.C. 201(a), emphasis added). These words "do not lend themselves to restrictive interpretation" (*United States* v. *Culbert*, 435 U.S. 371, 373 (1978)). In fact, it is hard to imagine how Congress could have expressed more vividly its intention to cover persons administering federal programs whether or not they have an employment relationship with the United States.

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[14] 18 U.S.C. 201(b) similarly makes it a crime for anyone to offer any thing of value to a public official with the intent of influencing any official act, aiding in the commission of a fraud on the United States, or inducing an act in violation of official duty.

[15] "Official act" is also expansively defined as including "any decision or action or any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official." 18 U.S.C. 201(a).

Petitioners claim that the term "public official" includes only those persons who "perform an official function for the Federal Government" (82-5279 Br. 14; see 82-5331 Br. 15). Assuming this test to be correct, petitioners plainly meet its requirements. As the court below found (J.A. 80), and as will be discussed later in more detail (*infra* pp. 33-36), petitioners were paid with federal funds and were administering a program completely funded by the federal government for federal objectives. Their positions as Executive Director and Housing Rehabilitation Coordinator of UNI clearly gave them "discretion in administering the expenditure of federal funds" (J.A. 80).[16] Although petitioners assert that they did not "perceive [themselves] as '* * * person[s] acting for or on behalf of the United States in an official function'" (82-5279 Br. 15), the contractors who paid petitioners ten percent of their rehabilitation contracts certainly "recognize[d] that the value [of dealing with petitioners was] not derived from [petitioners] personally," but rather from the "authority [petitioners] possess[ed]" as administrators of federal funds (82-5279 Br. 15). The contractors, in short, dealt with petitioners in their role as a "surrogate, a vicar, a deputy for the Federal Government" (82-5279 Br. 15).

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[16] The fact that petitioners' job descriptions did not authorize them to grant rehabilitation contracts (82-5279 Br. 6; 82-5331 Br. 4) does not undermine the court of appeals' finding (J.A. 80) that they had discretion in the expenditure of federal funds. Indeed, without such discretion it is hard to think why petitioners would have been worth bribing. The evidence presented at trial clearly showed that "the contractors favored by [petitioners] were successful in their bids," and in their dealings with the contractors neither petitioner "displayed any aspect of hypobulia" (J.A. 80). Furthermore, petitioners' actual ability to award the rehabilitation contracts is immaterial to their culpability under 18 U.S.C. 201(c). "Neither the ability to perform nor the actual performance of some identifiable official act as *quid pro quo* is necessary for a violation of [the federal bribery] statute[ ]." *United States* v. *Evans*, 527 F.2d 455, 481 (5th Cir. 1978). Indeed, an official can be convicted for bribery even if he lacks the authority to perform the act

"The clear purpose of the [federal bribery] statute is to protect the public from the evil consequences of corruption in the public service." *Kemler* v. *United States*, 133 F.2d 235, 238 (1st Cir. 1942). Section 201(a) should be construed broadly enough to accomplish that legislative end. *United States* v. *Evans*, 572 F.2d 455, 480 (5th Cir. 1978). Petitioner's direct responsibilities for the administration of HUD housing rehabilitation funds clearly render them "public officials" for purposes of the federal bribery statute. "Certainly, in the face of such sweeping language and the purpose it was designed to accomplish," there is no reason to construe the statute, as petitioners would, "to exclude any person or any conduct fairly within the broad statutory ambit." *Wilson* v. *United States*, *supra*, 230 F.2d at 524.

B. The Legislative History And Judicial Construction Of 18 U.S.C. 201(a) Demonstrate That The Statute Encompasses Persons Administering Federally Funded And Supervised Programs

The fundamental purpose of any bribery statute is to protect the integrity of government institutions. The federal law of bribery, therefore, has expanded gradually in scope in recognition of the growth of government and the concomitant increase in the number and sorts of persons performing official government functions. Federal courts, moreover, have given successive federal bribery statutes a broad reading "in order to accomplish the legislative

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for which the bribe was paid. *Ibid.*; *United States* v. *Birdsall*, 233 U.S. 223, 231-236 (1914).

purpose which they manifest." *United States* v. *Evans*, 572 F.2d 455, 480 (5th Cir. 1978).

1. In the seventeenth century, the common law crime of bribery extended only to the corruption of judges. 3 E. Coke, *Institutes of the Laws of England* 144, 147 (1628). By the nineteenth century[17] bribery had come to subsume corruption of "any public officer," whether or not a judicial officer, as well as bribery of voters and witnesses. See J. Stephen, *Digest of the Criminal Law* 85-87 (1877). See also 3 J. Stephen, *A History of the Criminal Law of England* 250-255 (1883); 1 J. Gabbett, *A Treatise on the Criminal Law* 163 (1843). Thus, although beginning on a "narrow base," the evolution of common law bribery demonstrated an "ever-expanding growth in recognition of an important social interest." R. Perkins, *Criminal Law* 468 (2d ed. 1969). See *id.* at 470-474; 1 W. Burdick, *The Law of Crime* 426-429 (1946).[18] Federal bribery law, as illustrated by the numerous bribery statutes enacted prior to 18 U.S.C. 201, has likewise experienced "ever-expanding growth" in recognition of the fact that "the essential objective of the bribery laws is to preserve the integrity of official action from direct and indirect corruption." Staff of House Comm. on the Judiciary, 85th Cong., 2d Sess., *Report on Federal Legislation* 70 (Comm. Print 1958) (hereinafter "*Staff Report*").

The first federal bribery statute, enacted in 1790 and reflecting the early common law, proscribed the giving of a bribe "to obtain or procure the opinion, judgment or decree of any judge or judges of the United States, in any suit, controversy, matter or cause pending before him" (Act of Apr. 15, 1790, ch. 9, § 21, 1 Stat. 117). Some 63 years later, Congress expanded the reach of the law by prohibiting the bribery of "any member of the Senate or House of Representatives" as well as "any officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any department of the Government of the United States" (Act of Feb. 26, 1853, ch. 81, § 6, 10 Stat. 171).[19] By 1878, the scope of federal bribery law had been broadened further by the passage of statutes that outlawed the bribery of or the acceptance of bribes by "any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Goverment thereof" (Rev. Stat. 5451 (1878 ed.); Rev. Stat. 5501 (1878 ed.).[20] This language was reenacted in bribery statutes contained in the Criminal Code of 1909, ch. 321, §§ 39 and 117, 35 Stat. 1096, 1109.

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[17] Blackstone defined bribery in the eighteenth century as an offense involving a judge "or other person concerned in the administration of justice," and included the giver of the bribe as well as its recipient as an offender. 4 W. Blackstone, *Commentaries on the Laws of England* 139-140 (1765). Hawkins, writing after Blackstone, defined bribery to include not only the corruption of judges and other persons involved in the administration of justice, but also "the taking or giving of a reward for offices of a public nature." 1 W. Hawkins, *Pleas of the Crown* 311-313 (1777).

[18] See also W. Clark & W. Marshall, *A Treatise on the Law of Crimes* 1032-1034 (7th ed. 1967) ("It is not even necessary that the person bribed shall be a public officer. It is enough if the duty in the performance of which he is influenced is a public duty.")

In 1948, Congress extended still further the reach of federal bribery law by amending Sections 39 and 117 of the Criminal Code of 1909, 35 Stat. 1096, 1109, so that they "embrace[d] all officers or persons acting on behalf of any independent agencies or Government-owned or controlled corporations" (H.R. Rep. No. 304, 80th Cong., 1st Sess. A14-A15 (1947); H.R. Rep. No. 152 (Pt. 2), 79th Cong., 2d Sess. A12-A13 (1946)). Section 39 was amended to proscribe the giving of a bribe to "any * * * person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency" (Act of June 25, 1948, ch. 645, § 201, 62 Stat. 691), while Section 117 was amended to prohibit the acceptance of a bribe by such a person (§ 202, 62 Stat. 691).[21] These amendments were prompted by *United States* v. *Strang*, 254 U.S. 491, 493 (1921), which had held that a federal conflict of interest statute did not apply to a person employed by a government-owned and controlled corporation because the corporation was "a separate entity" from the United States government. The committee reports on the 1948 legislation make clear Congress' unequivocal intent that the bribery statutes should be applied to any and all persons acting on behalf of the burgeoning Executive Branch of the United States government (H.R. Rep. No. 304, *supra*, at A14-A15; H.R. Rep. No. 152 (Pt. 2), *supra*, at A12):

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[19] Other early statutes prohibited the acceptance of bribes by judges (Rev. Stat. 5499 (1878 ed.)), or by Members of Congress (Rev. Stat. 5500 (1878 ed.)). See also 18 U.S.C. (1952 ed.) 204-207 (bribery of and acceptance of bribes by Members of Congress and judges).

[20] Section 5451 proscribed the promise or offer of a bribe to "any person acting for or on behalf of the United States," while Section 5501 prohibited such persons from asking for or accepting a bribe.

> When Congress enacted [these statutes] as a part of the 1909 Criminal Code, the present ramifications of the executive branch were not foreseen, and, consequently, the language proved inadequate to cover every new agency as indicated by the holding in the *Strang case*. Since then the growth of agencies, independent establishments, and Government-owned or controlled corporations has been phenomenal. It is the purpose of the inserted language to further what appeared unquestionably to be the intent of Congress, namely, to cover all persons acting for the United States Government in an official function.

The steady expansion of federal activity since the passage of the first bribery statute in 1790 also resulted in the enactment of other bribery statutes. The various statutes were not always harmonized with each other and they came to possess "unnecessary duplication[s]" as well as "omissions and loopholes." *Staff Report*, *supra*, at 70. The 1952 edition of Title 18 of the United States code contained 23 sections dealing generally with bribery and graft. 18

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[21] The 1948 amendments extended the language of former Section 39, 35 Stat. 1096, by "inserting words 'or any department or agency thereof', and by substituting words 'such department or agency' for 'department or office of the Government thereof'" (H.R. Rep. No. 304 *supra*, at A14). Section 117, 35 Stat. 1109, was amended by substituting the words "or agency thereof" for "or office of the Government thereof" (H.R. Rep. No. 304, *supra*, at A15). The purpose behind the amendment of Section 117 was to clarify the intent of Congress "to include within its scope all government bodies" (*ibid.*).

U.S.C. 201-223.[22] In 1961, President Kennedy, acting on the basis of the report of his specially appointed Advisory Panel on Ethics and Conflict of Interest in Government, sent a message to Congress calling for a revision of the laws governing conflicts of interest among public officials. Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government, Pub. Papers 326 (Apr. 27, 1961), *reprinted in* 107 Cong. Rec. 6835 (1961). Although the President's message did not include an explicit request for revision of the bribery laws, Congress took the opportunity to consolidate the "scraps and rag tags" of federal bribery law into a single, comprehensive statute. Special Committee on the Federal Conflict of Interest Laws, Ass'n of the Bar of the City of New York, *Conflict of Interest and Federal Service* 19 n.12 (1960).

The result of Congress' efforts in 1962 is the statute at issue in this case, 18 U.S.C. 201. The objective of the legislation was to bring uniformity and simplicity to the federal law of bribery, without "restrict[ing] the broad scope of the [prior] bribery statutes as construed by the courts." S. Rep. No. 2213, 87th Cong., 2d Sess. 4 (1962). To accomplish this objective, Congress spoke comprehensively. The term "public official" was "broadly defined to mean Member of Congress, any officer or employee of or person acting for or on behalf of the United States in an official function" (H.R. Rep. No. 748, 87th Cong., 1st Sess. 15 (1961); S. Rep. No. 2213, *supra*, at 7-8; 108 Cong. Rec. 21980-21983 (1962) (remarks of Sen. Kefauver)). The phrase "person acting for or on behalf of the United States" was, in turn, given a "comprehensive definition" (H.R. Rep. No. 748, *supra*, at 17): the phrase includes "within the statutory coverage those persons who perform activities for the Government, as, for example, through a contractual arrangement" (*id.* at 17-18).

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[22] According to a congressional staff report, "[n]ine sections * * * prohibit[ed] in general terms the bribery of Government employees, Members of Congress, judges and judicial officers (including jurors), and witnesses," while the rest of the 23 sections dealt with variations of bribery and conflicts of interest with respect to specific government employees (United States attorneys, marshals, revenue officers, customs officials, and banking officers). *Staff Report*, *supra*, at 65-66; footnotes omitted.

The breadth of the new bribery statute's definition of "public official" was not the product of inadvertance; Congress specifically debated whether to retain the expansive phrase "any person acting for or on behalf of the United States" in Section 201(a). Prior to 1962 several bills[23] were proposed which would have narrowed the definition of "public official" to include only "an officer, agent, or employee of the United States in the executive, legislative, or judicial branch of the Government, or of any agency" (*Staff Report*, *supra*, at 74). The Department of Justice specifically opposed this narrow definition.[24] Congress heeded the Department's objections and adopted H.R. 8140, 87th Cong., 1st Sess. (1961), which carried forward the definitional phrase applying the bribery statute to persons "acting for or on behalf of the United States." 18 U.S.C. 201(a). The bill that eventually became 18 U.S.C. 201 was described in testimony before the Senate as a "comprehensive statute applicable to all persons performing activities for or on behalf of the United States." *Conflicts of Interest: Hearing on H.R. 8140 Before the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 22 (1962) (statement of Deputy Attorney General Katzenbach).

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[23] H.R. 3411, 87th Cong., 1st Sess. (1961); H.R. 2156, 86th Cong., 1st Sess. (1959); H.R. 12547, 85th Cong., 2d Sess. (1958).

[24] Assistant Attorney General Nicholas deB. Katzenbach testified in hearings prior to the enactment of 18 U.S.C. 201(a):

> [t]he definition of "public official" * * * does not include any reference to persons "acting for or in behalf of the United States." This latter phrase appears in the existing law and we think its removal would be undesirable. Under the proposed definition it could be construed that under certain circumstances, a person acting in behalf of the United States would not be held to be an "officer, agent, or employee of the United States" as these terms are used in the bill. Persons acting in such a capacity should be protected from bribe offers (or punished for their acceptance).

Federal Conflict of Interest Legislation: Hearings on H.R. 302, H.R. 3050, H.R. 3411, H.R. 3412, and H.R. 7139 Before the Antitrust Subcomm. of the House Comm. on the Judiciary, 87th Cong., 1st Sess. 36 (1961).

The evolution of federal bribery law in general, and the legislative history of 18 U.S.C. 201(a) in particular, refute petitioners' assertions that their activities fall outside the scope of the statute. Contrary to petitioner Dixson's assertion (82-5279 Br. 12), 18 U.S.C. 201(a) does not define a "restrictive class of persons." Rather, the legislative history of the statute demonstrates that Congress' purpose was to speak expansively to cover all persons who exercise official power for or on behalf of the federal government. It would subvert that purpose to require Congress to add new language to the statute each time there is a delegation of power to administer federal programs and expend federal funds to new classes of persons who act for but are not officers of or employed by the United States.[25]

Petitioner Hinton's related argument, that only persons in an agency or direct contractual relationship with the United States can be said to be acting for or on its behalf (82-5331 Br. 7-15), must likewise be rejected. The legislative history of 18 U.S.C. 201(a) demonstrates that Congress considered but did not enact language limiting the statute to officers, agents and employees of the United States. Moreover, although the House committee report on 18 U.S.C. 201(a) mentions that the statute would cover persons performing activities for the government "through a contractual arrangement" (H.R. Rep. No. 748, *supra*, at

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[25] Nor should Congress be required, as petitioner Dixson suggests (82-5279 Br. 12-15), to specify in every statute delegating an official function that the delegee is subject to federal bribery law. The fact that 7 U.S.C. 84(d) expressly includes state and local grain inspectors as "public officials" within the reach of the federal bribery statutes does not evidence a congressional intent to permit other "persons acting for or on behalf of the United States" (18 U.S.C. 201(a)) to escape liability. As this Court recently noted in *Herman & MacLean* v. *Huddleston*, No. 81-680 (Jan. 24, 1983), slip op. 11 n.23 (quoting *SEC* v. *Joiner Corp.*, 320 U.S. 344, 350-351 (1943)), the maxim "expressio unius est exclusio alterius" must be "'subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose.'" The dominating, general purpose of 18 U.S.C. 201 is to deter and punish corruption in public service by all who exercise official power for or on behalf of the United States.

18), that relationship is used as an "example" (*ibid.*)—not as a definitional limit—of the coverage of the statute.[26]

2. There is a substantial consensus among federal district and appellate courts that persons carrying on activities authorized by statute, regulation, contract, or agreement as part of a federally sponsored and supervised program are "acting for or on behalf of the United States * * * in [an] official function" within the meaning of 18 U.S.C. 201(a). Contrary to the assertion of petitioner Hinton (82-5331 Br. 9), liability under 18 U.S.C. 201 and prior federal bribery statutes has not been limited to "factual situations involving officers and employees of the government."

In *United States* v. *Hollingshead*, 672 F.2d 751 (1982), the Ninth Circuit upheld the conviction under 18 U.S.C. 201(c) of the building service manager of the Los Angeles Branch of the Federal Reserve Bank of San Francisco. The evidence presented at trial showed that the defendant had received bribes and kickbacks to influence him in making purchase requisitions. The defendant argued that he could not be convicted under 18 U.S.C. 201(c) because, as an employee of a private banking institution, he was not a "public official" within the meaning of the bribery statute. The court of appeals rejected the argument, noting that the defendant's employment required him to "carry[ ] out tasks delegated by a government agency" (672 F.2d at 754). The federal reserve bank, moreover, was "clearly created for federal objectives," and was subject to "substantial federal government involvement through control by the Federal Reserve Board" (*ibid.*). In these circumstances, the court concluded that the defendant "was acting for or on behalf of the federal government" under 18 U.S.C. 201(a).

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[26] Significantly, the House Report on 18 U.S.C. 201(a) refers approvingly to *United States* v. *Levine*, 129 F.2d 745 (2d Cir. 1942), as an appropriate judicial construction of the phrase "person acting for or on behalf of the United States" (H.R. Rep. No. 748, *supra*, at 18). Despite petitioner Hinton's efforts to distinguish the case (82-5331 Br. 11-12), in many respects *Levine* presented a much less persuasive argument for the assertion of federal bribery jurisdiction than the present case. In *Levine*, the court of appeals held that an employee of the Market Administrator for the New York Metropolitan Milk Marketing Area was a "public official" within the meaning of the federal bribery statute. Although the Market Administrator was himself appointed by the Secretary of Agriculture, his employee, the defendant Levine, was neither appointed by the Secretary nor paid with federal funds. Rather, his services were paid for by funds obtained directly from the milk handlers in the area. Even more significantly, *Levine* makes it clear that although the Market Administrator was an agent of the State of New York, "that did not make him or his employees in their federal capacity any less subject to the criminal provisions regulating the conduct of persons acting on behalf of the United States" (129 F.2d at 748). Therefore, even though petitioners' direct employment or contractual relationship was with a private corporation, that fact alone does not insulate them from liability under 18 U.S.C. 201(c) "in their federal capacit[ies]" as administrators of federal funds (129 F.2d at 748).

In *United States* v. *Mosley*, *supra*, the Seventh Circuit upheld the conviction under 18 U.S.C. 201(g) of a state employee with responsibility for determining eligibility for jobs funded under the federal Comprehensive Employment and Training Act of 1973 (CETA), 29 U.S.C. 801 *et seq.* The defendant, who had extracted payments in return for CETA job referrals, argued that as a state employee he was not liable under the federal bribery statute. The court of appeals disagreed. The federal government had retained extensive supervisory control over the locally administered CETA programs (659 F.2d at 815), and "[a]lthough [defendant] was a 'state employee' in the sense that he had been hired by the state, his salary and the entire cost of the program he administered were funded by the federal Government for federal objectives" (*ibid.*). The record also demonstrated that defendant successfully obtained employment for those paying the bribes, and he therefore "authoriz[ed] the expenditure of federal funds *himself*" (*id.* at 816; emphasis in original). Accordingly, the court concluded that the defendant "was acting 'on behalf' of the federal Government" and was subject to the prohibition of 18 U.S.C. 201 (659 F.2d at 816).

The federal bribery statute has also been applied to private employees charged with the performance of official governmental functions. In *United States* v. *Kirby*, 587 F.2d 876, 879-880 (7th Cir. 1978), the defendants were convicted for bribing two privately employed grain inspectors licensed by the United States Department of Agriculture under the United States Warehouse Act, 7 U.S.C. 252. The court of appeals rejected the contention that such inspectors were not "public officials" within the meaning of 18 U.S.C. 201(a), noting that "Congress intended the term 'public official' to be 'broadly defined'" (587 F.2d at 879 n.3, quoting S. Rep. No. 2213, *supra*, at 7). The court concluded that the inspectors "meet the definition of public official in 18 U.S.C. § 201(a) since they were acting 'on behalf of' the Department of Agriculture by issuing the certificates required by the Warehouse Act and its implementing regulations" (587 F.2d at 880).[27]

A predecessor to 18 U.S.C. 201 has been applied to defendants whose contracts of employment expressly provided that they were "not considered to be * * * Federal employee[s]." *Harlow* v. *United States*, 301 F.2d 361, 370-371 (5th Cir.), cert. denied, 371 U.S. 814 (1962). In *Harlow*, the court of appeals sustained the convictions of former European Exchange System (EES) employees who had solicited payments in return for allowing others to do business with the various EES post exchanges on military bases in Europe. Although the defendant's employment contracts specified that they were not federal employees, the court concluded that they were "at least 'persons acting for or on behalf of the United States' within the purview of [18 U.S.C. (1952 ed.) 202]" (301 F.2d at 370).[28] The court reached this conclusion because the military post exchanges, operated by defendants, were "'arms of the Government deemed by it essential for the performance of governmental functions'" (*ibid.*, quoting *Standard Oil Co.* v. *Johnson*, 316 U.S. 481, 485 (1942)).

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[27] The inspectors in *Kirby* were not licensed under the United States Grain Standards Act, 7 U.S.C. 71 *et seq.*, relied upon by petitioner Dixson (82-5279 Br. 12-18). Although the Grain Standards Act does provide (7 U.S.C. 84(d)) that inspectors licensed under the Act shall be deemed to be "persons acting for or on behalf of the United States" for purposes of 18 U.S.C. 201(a), the Warehouse Act licensing provisions (7 U.S.C. 252) contain no such specification. Thus, under petitioner Dixson's analysis (82-5279 Br. 12-18), the court of appeals in *Kirby* erroneously upheld the defendants' convictions.

[28] 18 U.S.C. (1952 ed.) 202 prohibited "an officer or employee of, or person acting for or on behalf of the United States, in any official capacity" from asking, accepting, or receiving any money with intent to influence "his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity."

These cases demonstrate that the reach of 18 U.S.C. 201(a) is extremely broad.[29] The courts, moreover, have never regarded an employment relationship as a talismanic test for the applicability of federal bribery law.[30] Indeed, this Court, in construing a predecessor to 18 U.S.C. 201, focused not on the existence of an employment relationship with the government but rather upon the nature of the official duties performed on behalf of the United States. *Krichman* v. *United States*, 256 U.S. 363 (1921). In *Krichman*, the Court concluded that petitioner could not be convicted for offering a bribe to a baggage porter contrary to Section 39 of the Criminal Code of 1909 (35 Stat. 1096), because the baggage porter was not performing an official function even though the railroad was under wartime control and the Court therefore assumed that the porter was a government employee (256 U.S. at 366-367).[31] Thus, the existence of a "contractual or agency relationship" (82-5331 Br. 5) with the federal government has never been the conclusive factor in determining whether a person is acting for or on behalf of the United States. Rather, as the above cases illustrate, and as petitioner Dixson correctly states (82-5279 Br. 15), the "phrase 'in any official function' * * * points the way to the meaning of 'acting for or on behalf of the United States.'"

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[29] These cases are merely a sampling of instances where federal criminal jurisdiction has been exerted over persons "acting for or on behalf of the United States * * * in [an] official function" (18 U.S.C. 201(a)), even though the official had no direct employment relationship with the federal government. Numerous other cases have reached the same results in analogous factual settings. See, *e.g.*, *United States* v. *Levine*, *supra*, 129 F.2d at 747-748 (upholding the bribery conviction of an employee of the Market Administrator for the New York Metropolitan Milk Marketing Area, even though the employee was hired by the state and was not paid with federal funds); *United States* v. *Gallegos*, 510 F. Supp. 1112, 1113-1114 (D.N.M. 1981) (denying motion to dismiss indictment under 18 U.S.C. 201(b) of a state employee responsible for administering federal grants to homeowners under programs supervised by the Farmers Home Administration); *United States* v. *Griffin*, *supra*, 401 F. Supp. at 1230 (conviction under 18 U.S.C. 201(c) of an area management broker responsible for soliciting and receiving bids for rehabilitation of properties in a program sponsored by HUD); *United States* v. *Raff*, 161 F. Supp. 276, 279-281 (M.D. Pa. 1958) (denying motion to dismiss indictment under predecessor to 18 U.S.C. 201 of a partner in a private architectural engineering firm under contract with the Department of the Army to supervise construction at a military installation).

[30] For example, even though federal employees were not expressly included within the coverage of the 1873 and 1909 bribery statutes, this and other federal courts had no difficulty in concluding that such employees fell within the reach of the statutes as persons "acting for or on behalf of the United States" (Rev. Stat. 5451 (1878 ed.)). See *e.g.*, *United States* v. *Birdsall*, 233 U.S. 223, 228-231 (1914) (employees selected under the authority of the Secretary of the Interior to control liquor traffic among the Indians could be prosecuted under Section 117 of the Criminal Code of 1909 (35 Stat. 1109), where bribe was paid to influence official advisory function); *Felder* v. *United States*, 9 F.2d 872, 873-874 (2d Cir. 1925), cert. denied, 270 U.S. 648 (1926) (assistant United States Attorney comes within the purview of Section 39 of the Criminal Code of 1909 (35 Stat. 1096), where bribe was paid to influ-

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ence return of indictment); *United States* v. *Ingham*, 97 F. 935, 936 (E.D. Pa. 1899) (secret service operative employed by the Secretary of the Treasury comes within the terms of Rev. Stat. 5451 (1878 ed.) where bribe was paid to influence delegated law enforcement function).

[31] Contrary to the assertion of petitioner Hinton (82-5331 Br. 12-14), the Court in *Krichman* v. *United States*, *supra*, did not hold that the baggage porter was not acting for or on behalf of the United States; rather the Court concluded that the porter was not discharging an official function (256 U.S. at 365). The Court reasoned, in a manner fully consistent with the decision of the court of appeals below, that the bribery statute "aims to punish the attempted bribery or bribery of officials and those exercising official functions under or by the authority of a department or office of the Government. * * * It includes those, not officers, who are performing duties of an official character" (256 U.S. at 366). See also *In re Yee Gee*, 83 F. 145, 146-147 (N.D. Wash. 1897) (bribe paid to government translator did not fall within Rev. Stat. 5451 (1878 ed.) because it was not paid to influence translator's performance of his official functions); *United States* v. *Gibson*, 47 F. 833, 835 (N.D. Ill. 1891) (bribe offer to internal revenue officer in return for burning a distillery did not come within Rev. Stat. 5451 (1878 ed.) because the bribe was offered "for an act entirely outside the official function of the officer to whom [it was offered]").

Analyzed in light of the above cases, petitioners, in their roles as Executive Director and Housing Rehabilitation Coordinator of UNI, were unquestionably acting "for or on behalf of the United States * * * in [an] official function" (18 U.S.C. 201(a)). They were carrying out "tasks delegated by a government agency" (*United States* v. *Hollingshead*, *supra*, 672 F.2d at 754), in a program that was "clearly created for federal objectives" and was subject to substantial federal oversight and control (*ibid.*; *United States* v. *Mosley*, *supra*, 659 F.2d at 815). Although petitioners were private employees in the sense that they had been hired by UNI, their "salar[ies] and the entire cost of the program [they] administered were funded by the federal Government for federal objectives" (*United States* v. *Mosley*, *supra*, 659 F.2d at 815). Petitioners, moreover, solicited payments from various contractors in return for government-funded contracts, thereby "authorizing the expenditure of federal funds" (*United States* v. *Mosley*, *supra*, 659 F.2d at 816). In sum, unlike the porter in *Krichman* v. *United States*, *supra*, petitioners exercised official federal power in deciding what firms should benefit from a federal grant program funded by an act of Congress.

3. Petitioners rely on two cases from the United States Court of Appeals for the Second Circuit that impose a restrictive reading on the statute. *United States* v. *Del Toro*, 513 F.2d 656 (1975); *United States* v. *Loschiavo*, 531 F.2d 659 (1976). These cases are not supported by the language or legislative history of Section 201(a) and ignore the congressional mandate to construe the federal bribery statute broadly. See, *e.g.*, S. Rep. No. 2213, *supra*, at 4, 7-8; H.R. Rep. No. 748, *supra*, at 15, 17-18.

In *United States* v. *Del Toro*, *supra*, the court of appeals concluded that a city employee, who had the responsibility of locating office space for the federally funded Model Cities Program, was not a "public official" under 18 U.S.C. 201(a).[32] The court did not rest its conclusion on a finding that the city employee was not "acting for or on behalf of the United States" (513 F.2d at 662). Rather, the court held that the employee was not acting "under or by authority of any * * * department, agency or branch" of the federal government (*ibid.*). The court noted that the bribed official "was a city employee, carrying out a task delegated to him by his superior, another city employee," and although a bribe had been paid to obtain a federally funded lease from the official, "[t]here were no existing committted federal funds for the purpose" (*ibid.*). The court disregarded the fact that federal funds paid 100% of the cost of the Model Cities Program, as well as 80% of its nonfederal administrators' salaries (*id.* at 661-662). Instead, the court relied on the rule of lenity and the fact that the federal conflict of interest statute, 18 U.S.C. 203, does not generally include state employees within its scope (513 F.2d at 662-663).

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[32] The city employee had been bribed in order to influence his selection of office space for the Model Cities program (513 F.2d at 659).

In *United States* v. *Loschiavo, supra*, the defendant bribed the same Model Cities administrator whose influence was sought in *Del Toro*, again to obtain a leasing arrangement. The defendant had not raised the issue of the administrator's "public official" status on direct appeal, but, following the *Del Toro* decision, filed a petition under 28 U.S.C. 2255 challenging his conviction on this ground (531 F.2d at 660-661). The court of appeals found that it was "bound by the holding in *Del Toro* on 'the key issue of the nature of [the administrator's] employment,'" and rejected the government's argument that the case was distinguishable from *Del Toro* because federal funds had actually been authorized for the *Loschiavo* lease (513 F.2d at 661). Without examining the legislative history of 18 U.S.C. 201(a) and without the citation of other authority, the court concluded (531 F.2d at 661):

> The type of public project involved, or the amount of federal funding entailed, may be important in applying [some] parts of the statute, such as the "official act" requirement of § 201(b)(1) or the "fraud * * * on the United States" requirement of § 201(b)(2), but for the purpose of deciding [a person's] status as a "public official" under § 201(a), it is not the aspects of the particular project which are of the greatest significance, but the character and attributes of his employment relationship, if any, with the federal government.

The United States believes that both cases were wrongly decided.[33] Neither the rule of lenity, the legislative history of 18 U.S.C. 201, nor the statutory analysis undertaken by the Second Circuit supports its crabbed interpretation of "acting for or on behalf of the United States" (18 U.S.C. 201(a)).

a. The rule of lenity, relied upon by the court of appeals in *Del Toro* (513 F.2d at 662) and invoked by petitioners in this Court (82-5279 Br. 19-20, 82-5331 Br. 12-15), does not justify that court's restrictive interpretation of the statute. The rule of lenity is merely "a[ ] guide to statutory construction" (*Callanan* v. *United States*, 364 U.S. 587, 596 (1961)), and is not applicable unless there is such a "grievous ambiguity or uncertainty in the language and structure of the Act" (*Huddleston* v. *United States*, 415 U.S. 814, 831 (1974)) that even "[a]fter [a court has] 'seize[d] everything from which aid can be derived * * *' [it is still] left with an ambiguous statute." *United States* v. *Bass*, 404 U.S. 336, 347 (1971), quoting *United States* v . *Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805). Moreover, the rule of lenity "only serves as an aid for resolving an amibuity; it is not to be used to beget one. * * * The rule comes into operation at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Callanan* v. *United States*, *supra*, 364 U.S. at 596. As the Court observed in *United States* v. *Moore*, 423 U.S. 122, 145 (1975), quoting *United States* v. *Brown*, 333 U.S. 18, 25-26 (1948):

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[33] The United States Attorney's Manual states that *Del Toro* was "wrongly decided" and suggests that "whenever similar cases arise in other circuits, prosecution under section 201 is encouraged" (U.S. Attorney's Office, U.S. Dep't of Justice, *U.S. Attorney's Manual* 9-85.110 (1977)). Arguably, however, the city employee in *Del Toro* and *Loschiavo* may not have been discharging an "official [federal] function" (18 U.S.C. 201(a)) in leasing office space for the Model Cities Program since that task was apparently delegated by another city employee, not by statute, regulation, contract, or agreement with the federal government. The petitioners' administration of federal community development grants, however, which is authorized by statute, regulation, and contracts between the federal government, the City of Peoria and UNI, presents a much stronger case for application of 18 U.S.C. 201. See *infra* pp. 33-36.

> The canon in favor of strict construction [of criminal statutes] is not an inexorable command to override common sense and evident statutory purpose * * *. Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.[34]

Contary to the apparent conclusion of the *Del Toro* court (513 F.2d at 662), there is no ambiguity in 18 U.S.C. 201(a) that justifies giving the statute an artificially narrow construction. As we have already explained, the language of Section 201(a) was chosen to insure that the bribery statute would *not* be restricted to employees, but would be "applicable to *all persons* performing activities for or on behalf of the United States" (H.R. Rep. No. 748, *supra*, at 17; emphasis added). Congress' clearly expressed choice should not be disregarded.

b. Neither the *Del Toro* nor the *Loschiavo* courts analyzed the legislative history of 18 U.S.C. 201(a). The court in *Del Toro*, however, purported to take a "broader look" at statutes "related" to 18 U.S.C. 201, and concluded that this endeavor supported its restrictive reading of Section 201(a) (513 F.2d at 662). The court noted that the federal conflicts of interest statute, 18 U.S.C. 203, applied to "special Government employees" and Congress had specifically delineated the circumstances under which state employees qualified as "special Government employees" under the statute (513 F.2d at 662-663). See, *e.g.*, 42 U.S.C. 246(f)(7)(A) (state officers or employees who are assigned to the Department of Health and Human Services without appointment are subject to 18 U.S.C. 203); 5 U.S.C. (& Supp. V) 3374 (state employees assigned or on detail to a federal government executive agency are deemed employees of the agency for purposes of 18 U.S.C. 203). The court reasoned that if Section 201(a) were given a broad reading, there would be no need for such statutes specifically including state employees within the reach of 18 U.S.C. 203 (513 F.2d at 663).

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[34] See also, *e.g.*, *United States* v. *Naftalin*, 441 U.S. 768, 778-779 (1979); *United States* v. *Culbert*, 435 U.S. 371, 379 (1978); *Scarborough* v. *United States*, 431 U.S. 563; 577 (1977); *Iannelli* v. *United States*, 420 U.S. 770, 789 (1975); *id*. at 795 (Douglas, J., dissenting); *id*. at 798 (Brennan, J., dissenting).

The fundamental error of this analysis is the court of appeals' failure to recognize that 18 U.S.C. 201 has a completely different structure from 18 U.S.C. 203 and the other conflict of interest provisions of the Code, 18 U.S.C. 202-209. Section 201 was designed as a comprehensive bribery statute applying a general proscription to *all* "public officials" as "broadly defined" in subsection (a) (S. Rep. No. 2213, *supra*, at 7). Sections 202-209, on the other hand, are designed to "balance the dual objectives of promoting government integrity and facilitating the government's recruitment and retention of needed personnel" (S. Rep. No. 2213, *supra*, at 7). The full prohibitions of Section 203 are, therefore, explicitly limited to "officers and employees" of the Executive, Legislative and Judicial branches (18 U.S.C. 203(a)); a lesser array of prohibitions are imposed on "special government employee[s]" (18 U.S.C. 203)). Given this structure, it is clear that further specification is necessary to clarify when state employees should be deemed to be covered by Section 203; and the fact that Congress has so specified has no implications for the general bribery statute, which comprehensively covers all persons who act in any official capacity for or on behalf of the United States.[35]

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[35] Indeed, Congress' decision to omit reference to Section 201—the "pure bribery" statute—in provisions rendering state employees subject to federal conflicts of interest law would reasonably indicate that the legislature believed that such employees were already covered by the broad definition of "public official" in Section 201(a), but not by the narrower provisions of Section 203 and related statutes.

The *Del Toro* decision has had a negative reception in Congress. The most recent version of the proposed Criminal Code Reform Act, S. 1630, 97th Cong., 2d Sess., §§ 1351-1352 (1982), would prohibit bribery and graft involving a "public servant," defined as including (*id.* at § 1351(c)(6)): "an agent of a State or local government charged by a federal statute, or by a regulation issued pursuant thereto, with administering monies or property derived from a federal program, and the official action or legal duty is related to the administration of such

C. The Extent Of Federal Involvement In The Housing Program Administered By Petitioners Compels The Conclusion That They Are "Public Officials" Under 18 U.S.C. 201(a)

The extent of federal involvement in the housing rehabilitation program administered by petitioners under the Housing and Community Development Act of 1974 leads to the conclusion that petitioners were "acting for or on behalf of the United States * * * in [an] official function" (18 U.S.C. 201(a)) when they extracted payments in return for federally funded construction contracts. Although petitioners assert that federal involvement in UNI's housing rehabilitation program was insubstantial (82-5279 Br. 22-24; 82-5331 Br. 18-19) and argue that they performed no official functions in their roles as Executive Director and Housing Rehabilitation Coordinator (82-5279 Br. 25; 82-5331 Br. 19), the record in this case refutes these claims and fully supports the court of appeals' conclusion that petitioners were "public officials" within the meaning of Section 201(a). Petitioner Dixson's related contention that the court of appeals' construction of "public official" is unconstitutionally vague (82-5279 Br. 22) is likewise without merit.

1. Contrary to the assertion of petitioner Dixson (82-5279 Br. 17), the housing rehabilitation program administered by petitioners was not merely "a local project to accomplish local objectives." The congressional reports accompanying the legislation that became the Housing and Community Development Act of 1974, 42 U.S.C. (& Supp. IV) 5301 *et seq.*, demonstrate that the grant program created by the Act was intended to meet national housing objectives while at the same time simplifying the administration of federal funds (H.R. Rep. No. 93-1114, 93d Cong., 2d Sess. 6-7, 47 (1974), adopted in H.R. Conf. Rep. No. 93-1279, 93d Cong., 2d Sess. 123 (1974)):

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program." The Senate Report accompanying the legislation explains that the provision "is designed to overcome the holding in the *Del Toro* case" (S. Rep. No. 97-307, 97th Cong., 1st Sess. 432 (1981)). S. 1630 has not yet been reintroduced in the 98th Congress.

> The committee bill proposes an application and review procedure which has two basic purposes: first, that essential national goals and objectives, as developed over nearly three decades of Federal involvement in housing and community development, be retained and that communities be required to use block grant funds to achieve those objectives; and second, that the lengthy, burdensome, and generally frustrating process by which HUD approves applications for various community development grants be simplified to the greatest extent possible.
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> [The purpose of the Act is to further] the development of a national urban growth policy by consolidating various complex and overlapping assistance programs into a consistent system of Federal aid which * * * furthers achievement of the national goal of a decent home and a suitable living environment for every American family * * *.

The 1974 legislation sought to achieve these goals by maintaining close federal supervision over the expenditure of federal housing funds, while at the same time delegating substantial authority to state and local governments in the administration of those funds.[36]

As noted by petitioner Dixson (82-5279 Br. 16), Congress considered and rejected a proposal to distribute housing rehabilitation funds to the states "with absolutely no strings attached."[37] Instead, Congress adopted extensive application and review standards, and authorized the Secretary of HUD to promulgate regulations to insure that the grant program established by the Act would "provide communities with substantial latitude and flexibility to determine their particular needs and the range of activities they deem necessary to meet those needs, *without derogating from HUD's responsibility to assure that nationally-established objectives are being met in a reasonable manner*" (H.R. Rep. No. 93-1114, *supra*, at 8) (emphasis added). Although petitioner Dixson asserts that the resulting government control was "of the most general type" (82-5279 Br. 16), Congress clearly called for extensive "executive oversight of programs to insure that Federal funds are being used efficiently to achieve national objectives" (S. Rep. No. 93-693, *supra*, at 55). Thus, as the court of appeals below correctly concluded (J.A. 79), the delegation of authority to administer funds under the Act "was to streamline the funding process rather than to abdicate federal control over the substantive aspects of the [housing] program."

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[36] See also S. Rep. No. 93-693, 93d Cong., 2d Sess. 48 (1974) (adopted in H.R. Conf. Rep. No. 93-1279, *supra*, at 123) ("The existence of healthy urban communities * * * is essential to the Nation's welfare and requires expansion of public and private investment, sustained action by Federal, State and local governments, and improved program planning, implementation, and evaluation efforts").

[37] See S. Rep. No. 93-693, *supra*, at 2 (criticizing the automatic distribution of federal funds to cities "without proper regard to the use of such funds in carrying out national objectives specified in the [Housing and Community Development] Act").

In accordance with this policy, the Housing and Community Development Act of 1974 and its implementing regulations provide a comprehensive scheme of federal supervision over the local administration of grant funds. Applicants under the Act are required to submit to the Secretary of HUD for federal approval a three-year comprehensive community development plan, a detailed program of implementation, and a housing assistance plan prior to the receipt of any funds. 42 U.S.C. (& Supp. IV) 5304. Activities that are eligible for funding under the grant program are set forth in great detail by the Act (42 U.S.C. (& Supp. IV) 5305), and annual performance reports are required to be submitted to determine compliance with the objectives of the Act (42 U.S.C. (Supp. IV) 5304(d); 24 C.F.R. 570.900-570.913). The Secretary of HUD has a right of access to all financial records of grantees and subgrantees (24 C.F.R. 570.509) and is directed to make reviews and audits on an annual basis. 42 U.S.C. (& Supp. IV) 5304(d), (g). Grant recipients are required to comply with federal equal opportunity, labor, safety, environmental, and other standards. 42 U.S.C. (& Supp. IV) 5304(h), 5309-5310; 24 C.F.R. 570.600-570.611. The Secretary of HUD, moreover, is authorized to terminate or limit funding for noncompliance with the requirements of federal law. 42

U.S.C. 5311; 24 C.F.R. 570.910-570.913. Significantly, the Act specifically contemplates the administration of grant funds by nonprofit corporations, like UNI, when such corporations are "designated by the chief executive officer of a State or a unit of general local government to undertake a Community Development Program in whole or in part" (42 U.S.C. 5302(c)). See also 24 C.F.R. 570.204.[38] Therefore, as the court of appeals properly concluded, "the statute, regulations, and legislative history manifest Congress' intent to promote efficient, effective federal supervision over the Community Development Block Grant program. The extent of federal involvement is such that Dixson and Hinton were acting on behalf of the United States in their administration of the federal funds under the program" (J.A. 79).

2. Petitioner Hinton protests that the holding of the court below is erroneous because, carried to its logical conclusion, "anyone acting in a federally funded program could be said to be 'a person acting for or on behalf of the United States'" (82-5331 Br. 22). This assertion ignores the fact that the court of appeals also analyzed petitioners' "positions within the [federally funded] program" (J.A. 80) in finding that they fell within the terms of Section 201(a). The decision below rests on petitioners' official status as administrators of federal grants.

Although petitioners could not be fired by HUD, their salaries and the entire cost of the UNI rehabilitation program were supported by HUD funds. These funds, moreover, could be terminated by HUD for noncompliance with the objectives of the Act. 42 U.S.C. 5311; 24 C.F.R. 570.910-570.913. Petitioners, furthermore, possessed and exercised the authority to award housing rehabilitation contracts, paid for with grant funds, to contractors who agreed to pay them a ten percent kickback (J.A. 80; see *supra* n.16). In these circumstances, petitioners "were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds" (*ibid.*).

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[38] Although a state or local government has "the choice of which local non-profit organization[s]" (82-5331 Br. 17) will administer a grant under the Act, those organizations must meet strict HUD eligibility standards. 42 U.S.C. 5302(c); 24 C.F.R. 570.204(a)(2).

Petitioners, in short, were not just "anyone acting in a federally funded program" (82-5331 Br. 22). Rather, as petitioner Dixson correctly states, they were "person[s] whose salar[ies] [were] derived from Federal funds and who ha[d] some influence in the dispersal of Federal funds" (82-5279 Br. 25). On these facts, the court of appeals properly found that petitioners were "acting for or on behalf of the United States * * * in [an] official function" (18 U.S.C. 201(a)).

3. Petitioner Dixson suggests that the lower court's construction of "public official" under 18 U.S.C. 201(a) is unconstitutionally vague (82-5279 Br. 22). This contention is insubstantial.

A statute may be found to be unconstitutionally vague if it fails to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly," or if it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis" (*Grayned* v. *City of Rockford*, 408 U.S. 104, 108-109 (1972)). Section 201(a) suffers from neither infirmity, as it "provides sufficient notice of the type of conduct it prohibits" and "is susceptible of consistent judicial interpretation." Comment, *The Federal Bribery Statute: An Argument for Cautious Revision*, 68 Ky. L.J. 1026, 1029 (1980).

Section 201(a), to be sure, defines "public official" in broad terms. Persons of ordinary capacity and intelligence, however, can certainly determine when they are "acting for or on behalf of the United States * * * in any official function" (18 U.S.C. 201(a)). A criminal law is "not unconstitutional merely because it throws upon men the risk of rightly estimating a matter of degree." *International Harvester Co.* v. *Kentucky*, 234 U.S. 216, 223 (1914).[39] The court of appeals' construction of Section 201(a), moreover, is straightforward and can be readily and consistently applied to divergent factual circumstances. In essence, the court below analyzed (1) the extent of federal involvement in the community development block grant program and (2) petitioner's roles in administering that program (J.A. 78-80). As we have already shown, this approach has also been adopted by most other federal district and appellate courts. Far from creating a "nightmare" for "attorneys, defense lawyers and trial judges" (82-5279 Br. 24), the court below has construed the terms of Section 201(a) in accordance with its plain meaning and in a manner that is consistent with the weight of existing precedent.

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[39] Petitioners, moreover, cannot plausibly claim that they were surprised by the application of federal criminal law to their activities. UNI's proposal to the City of Peoria was to achieve the goals "set forth in the Housing and Community Development Act" (Gov't Exh. 19 at 2), and the amended grant agreement between the city and UNI expressly

D. The Federal Government Has A Strong And Legitimate Interest In Prosecuting Petitioners For Their Misuse Of Government Funds

Relying on general notions of comity and federalism, petitioners assert that they do not fall within Section 201(a)'s definition of "public official" because it "would be presumptuous of Congress to draft legislation that intrudes into the area of State criminal law" (82-5279 Br. 22; see also 82-5331 Br. 14-15). This argument ignores the strong federal interest in prosecuting petitioners for their corrupt administration of federal funds.

In 1948, Congress expanded the ambit of federal bribery law in express recognition of the "phenomenal" growth of "agencies, independent establishments, and government-owned or controlled corporations" employing persons that performed official governmental functions traditionally discharged by federal officers and employees (H.R. Rep. No. 304, *supra*, at A14-A15; H.R. Rep. No. 152 (Pt. 2), *supra*, at A12; see also Reviser's Notes, 18 U.S.C. (1952 ed.) 201). The burgeoning development of federal grants-in-aid pro-

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provided the UNI would comply with a broad range of federal laws, including wage and safety standards, equal employment opportunity requirements, and the Copeland Anti-Kickback Act (J.A. 71-72). Petitioners' knowledge of these requirements, as well as their certain knowledge of the source of UNI's funding, was surely adequate to put them on notice that they were "acting for or on behalf of the United States" (18 U.S.C. 201(a)).

grams since that time has resulted in further delegation of governmental authority to the states and numerous other local entities. The Office of Management and Budget has reported that (Circular No. A-102, *reprinted in* 45 Fed. Reg. 21836, 21840 (1980)):

> Federal financial assistance to State and local governmental and other non-Federal domestic organizations has increased from $3 billion in fiscal year 1955 to $90 billion for fiscal year 1980. This assistance is provided through a network of over 1,100 programs administered by 52 Federal departments, agencies, and commissions. The programs are carried out by 50 States, 3,000 counties, nearly 90,000 local governments, and innumerable nongovernmental organizations.

Housing and Community Development programs, like the one involved in the present case, received congressional authorizations of $3.65 and $3.8 billion for fiscal years 1979 and 1980, the period covered by petitioners' indictment. Pub. L. No. 95-128, § 103(a), 91 Stat. 1113; see H.R. Conf. Rep. No. 95-634, 95th Cong., 1st Sess. 46 (1977); H.R. Rep. No. 95-236, 95th Cong., 1st Sess. 3, 32 (1977). Funding for Housing and Community Development programs is projected to reach $4.11 billion in fiscal year 1983. Pub. L. No. 96-399, § 103(a)(1), 94 Stat. 1618; see H.R. Conf. Rep. No. 96-1420, 96th Cong., 2d Sess. 6, 77 (1980).

There is no substance to the argument that it is inappropriate to apply federal (rather than state) criminal law to prevent and punish corruption in the distribution of federal funds pursuant to a federal program; the fact that state and local officials (and private persons) participate in the distribution of those funds and the administration of that program does not justify the conclusion that they should be insulated from the federal criminal law. The purpose of the federal bribery statute is to assure that federal governmental powers are exercised honestly and are not corrupted by inducements for private gain. The power to determine who shall be given federal money to rehabilitate houses under a federal housing program is an important federal governmental power. It is critically important to the success of the federal program that this power to choose among applicants for these possibly lucrative rehabilitation contracts not be corrupted by bribery. It is therefore preposterous to suggest that reading a broad federal criminal statute naturally to encompass this important federal purpose would somehow represent an undue intrusion upon the criminal jurisdiction of the states.[40] As the district court noted in *United States* v. *Gallegos*, 510 F. Supp. 1112, 1113-1114 (D.N.M. 1981):

> the United States, not the [state] is harmed by the improper influence allegedly exerted * * * in connection with the * * * grant program. There is no reason to think that Congress would not intend such an injury to be punishable under federal law.[41]

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[40] Indeed, it is not entirely clear that petitioners, as officers of UNI, could be prosecuted under the Illinois bribery statute, which by its express terms applies only to the bribery of or receipt of bribes by "any public officer, public employee, juror or witness." Ill. Ann. Stat. ch. 38, § 33-1(d), (e) (Smith-Hurd Cum. Supp. 1982). A "public officer" is defined by statute as "a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State" (Ill. Ann. Stat. ch. 38, § 2-18 (Smith-Hurd Cum. Supp. 1982)), while a "public employee" is defined as a "person, other than a public officer, who is authorized to perform any official function on behalf of, *and is paid by*, the State or any of its political subdivisions" (Ill. Ann. Stat. ch. 38, § 2-17 (Smith-Hurd Cum. Supp. 1982) (emphasis added). The single reported state case construing these legislative definitions demonstrates that the reach of the state bribery statute is not as extensive as the federal statute. *People* v. *Drish*, 24 Ill. App. 3d 225, 228-229 (1974) (member of city planning commission is a "public officer" because the commission discharged a public duty and the commission as well as the qualifications of its members are established by statute).

[41] In an analogous context, this Court has applied the federal fraud statute to contractors who submitted collusive bids on state projects funded by the federal government. *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 544 (1943). The Court rejected the claim that the federal fraud statute did not apply because the federal funds were channelled through the state government and respondents therefore lacked "a direct contractual relationship" with the United States (317 U.S. at 541). The Court noted that "Government money is as truly expended whether by checks drawn directly against the Treasury to the ultimate recipient or by grants in aid to states. * * * These funds are as much in need of protection from fraudulent claims as any other federal money, and the statute does not make the extent of their safe-

Similarly, there is no strong reason why the burden of preserving the integrity of the distribution of federal funds pursuant to federal programs should be placed on understaffed local law enforcement authorities. The responsibility of guaranteeing the integrity of federal programs rests on the federal government.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted.

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March 1983

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guard dependent upon the bookkeeping devices used for their distribution. * * * The fraud here could not have been any more of an effort to cheat the United States if there had been no state intermediary" (*id.* at 544; footnote omitted). By a parity of reasoning, petitioners in this case should be held liable for their acceptance of bribes because, although they were private employees of UNI, they were nevertheless administering the distribution of federal funds and "bookkeeping devices used for their distribution" (317 U.S. at 541) should not determine whether petitioners were "acting for or on behalf of the United States * * * in [an] official function" (18 U.S.C. 201(a)).

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Nos. 82-5279 and 82-5331

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ARTHUR DIXSON,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

JAMES LEE HINTON,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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THE REPLY

THE GOVERNMENT, WITH THE ESPOUSED PURPOSE OF ELUCIDATING THE "PLAIN MEANING" OF "PUBLIC OFFICIAL" WITHIN THE FEDERAL BRIBERY STATUTE, RESORTED TO THE METHOD OF APPROPRIATING FROM TWO SUPREME COURT DECISIONS LANGUAGE ABOUT THE BROAD SWEEP OF TWO OTHER CRIMINAL STATUTES AND THEREBY CONCLUDED THAT THE "PLAIN MEANING" OF "PUBLIC OFFICIAL" WITHIN THE FEDERAL BRIBERY STATUTE ENCOMPASSES ANY PERSONS ADMINISTERING FEDERAL PROGRAMS; THE REST OF THE GOVERNMENT BRIEF IS A SERIES OF CIRCULAR ARGUMENTS THAT ASSUME WHAT THEY ARE INTENDED TO PROVE—NAMELY, THAT PETITIONERS IN THEIR EMPLOYMENT WITH UNITED NEIGHBORHOODS, INCORPORATED (UNI) WERE PUBLIC OFFICIALS BECAUSE THEY ACTED "FOR OR ON BEHALF OF THE UNITED STATES, OR ANY DEPARTMENT, AGENCY, OR BRANCH OF GOVERNMENT THEREOF IN ANY OFFICIAL FUNCTION."

The facts in this case are not in dispute. Petitioners, Arthur Dixson and James Lee Hinton, were, respectively, the executive director and rehabilitation coordinator of UNI. UNI, a community based non-profit corporation,[1] entered into an agreement with the City of Peoria to administer a Community

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[1] In the heading of its main argument, the Government describes UNI as a "quasi public corporation." (Govt. Br. 13). This is inaccurate and misleading. Although a "quasi public corporation" ("more commonly and more correctly styled 'public service corporation' ") is not a public corporation, strictly speaking, nevertheless, such a corporation, to be so designated, must be "organized for governmental purposes and contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, water and electric light companies, and irrigation companies." Black's Law Dictionary 309 (rev. 5th ed. 1979). In contrast, UNI had the long-range plans of creating a self sufficient and desirable community (Govt. Exhibit 19, p. 1) and, even in the administering of this federal grant for the City of Peoria, was assisting *individual* home owners rather than providing a *public* utility.

Block Grant Program for it (J.A. 41, 50, 54, 64), and received in excess of one million dollars to provide assistance to homeowners in the center southside of the City of Peoria. (J.A. 35). During this same period of time, the City of Peoria received in excess of $23 million in Community Development Block Grant Funds. (Govt. Exhibit 12, p. 3).

Petitioners agree with the Government that if, in their employment with UNI, they constituted "public officials" within the purview of the Federal bribery statute, they did so as:

> person[s] acting for or on behalf of the United States, or any department, agency, or branch of Government thereof . . . in any official function, under or by authority of any such department, agency, or branch of Government. . . . [18 U.S.C. 201(a)].

To be sure, the one and only issue before this Court is whether petitioners, as employees of UNI, were members of that class of "public officials," defined above—namely, the class of persons who are deemed "public officials" even though they are not Federal employees.

The Government's position is that the plain language of the statute establishes that petitioners are included within its reach. (Govt. Br. 13). In other words, the Government claims it is obvious from a mere reading of the above statutory language that petitioners are being described by it.

(i)

The Government's *A Priori* Determination Of The So-Called "Plain Meaning" Of The Statute

The Government, with the stated objective of establishing the plain meaning of the above statutory language, found that its words " 'do not lend themselves to restrictive interpretation' *United States* v. *Culbert*, 435 U.S. 371, 373 (1978)." (Govt. Br. 15). In *Culbert*, however, the Court was referring not to the breadth of the language of the bribery statute but to that of the Hobbs Act, which, according to the Court, "sweeps within it all persons who have 'in any way or degree . . . affect[ed] commerce by robbery or extortion.' 18 U.S.C. 1951(a) (1976 ed.)," *Culbert, supra, id.*

The Government argued for an almost limitless sweep of the bribery statute, not by analyzing the ordinary meaning of the nouns and adjectival phrases of Section 201(a), but by fiat. The first sentence in its would-be search for the plain meaning of the statute is the conclusion: "The federal bribery statute is remarkable because '[t]he statutory language is sweeping' (*Lewis* v. *United States, supra*, 445 U.S. at 60)." (Govt. Br. 14). But in *Lewis*, the Court was not speaking about the bribery statute, but the scope of the firearms statute. In the words of the Court:

> An examination of Section 1202(a)(1) reveals that its proscription is directed unambiguously at any person who "has been convicted by a court of the United States or of a State . . . of a felony." No modifier is present, and nothing suggests any restriction on the scope of the term "convicted." [*Lewis* v. *United States*, 445 U.S. 55, 60 (1980)].

The Court in both cases concluded to the sweeping scope of the criminal statute it was considering by analyzing the plain meaning of the class of persons described in the statutes—respectively, "persons guilty of robbery or extortion that affects commerce" and "persons who have been convicted of a felony by a U.S. court."

In contrast, in the instant case, the Government, despite its announced objective of arriving at the plain meaning of "public official" within Section 201(a), failed to analyze any of the terms of the statute. Furthermore, inasmuch as the construction of the class of persons entailed by "person[s] acting for or on behalf of the United States or any department, agency, or branch of Government thereof in any official function" is crucial to an understanding of the plain meaning of the statutory language, the Government cannot claim to have arrived at the plain statutory meaning without even a word of discussion about this language.

The Government argued that the words "or" and "any" as used in the statute are most significant in establishing that the plain statutory meaning of "public official" is sweeping.[2] (Govt. Br. 15). These two words, "or" and "any," are defined in Webster's Third International Dictionary as "function words."[3] Such a function word expresses "primarily grammatical relationship (as a preposition, auxiliary verb, conjunction, conjunctive adverb, or relative)—called also *empty word, form word.*" Webster's Third International Dictionary. Such a word is a syncategorematic—*i.e.*, "not capable of standing alone as a term in a proposition: having significance only in conjunction with another expression." *Id.* Consequently, it is incredible that the Government should make any point about the use of these words.

In order to find a key to the sweeping scope of the statute because of the use of "or" in two particular instances, the Government had to begin its quotation with "officer *or* employee *or* person acting for or on behalf of . . ." (Govt. Br. 15). (Emphasis supplied by Government). But, surely, the statute is not sweeping because it covers Federal officers and employees, a fact that is not at issue in the instant case. Rather, if the statute is sweeping, it must be sweeping because of the one remaining category of persons covered by it—namely, "persons acting for or on behalf of the United States in any official function. . . ."

---

[2] In the words of the Government:

> " 'Congress included no limiting modifier in the statute to restrict bribery prosecutions to persons having an employment relationship with the federal government. To the contrary, the terms of the statute expressly reach any "officer *or* employee *or* person acting for or on behalf of the United States, or *any* department, agency, or branch of Government thereof, in *any* official function' (18 U.S.C. 201(a), emphasis added)." (Govt. Br. 15).

[3] "Any" is defined as ". . . 1b: one, no matter what one: EVERY—used as a function word esp. in assertions and denials to indicate one that is selected without restriction or limitation of choice (*any* child would know that) (forbidden to enter *any* house) . . ." Webster's Third International Dictionary.

"Or" is defined as "-1 used as a function word to indicate (1) an alternative between different or unlike things, states, or actions." *Id.*

That the Government found evidence of the plain meaning of the statute from the fact that the word "any" is used in two particular instances (*i.e.*, "acting for or on behalf of the United States, *any* department, agency, or branch of Government thereof . . . in *any* official function") is tantamount to finding significance in the fact that the word "a" is used twice, since the words "any" and "a" are both function words and can be used almost interchangeably.[4]

The Government's point here seems to be that, inasmuch as Congress used an indefinite modifier of "person" and "official function," this reveals in the language itself, Congress' intent to give a far-reaching, almost limitless scope to the statute. But this inference is unjustified since all statutes enunciate universal propositions, whether affirmative or negative. Accordingly, all statutes must use the indefinite "any" or "a," which make clear that the statute applies to each and every member of the class described. Thus, for example, "any person who . . ." or "a thing that . . ." is commonplace statutory language.

As the Government acknowledged in another place, the use of "any" in the phrase "in any official function" reflects a restriction on the statute. So, the Government reasoned that petitioner Hinton (82-5331 Br. 12-14) had misunderstood *Krichman* v. *United States*, 256 U.S. 363, 365 (1921), because in *Krichman*, the Court "did not hold that the baggage porter was not acting for or on behalf of the United States; rather the Court concluded 'that the porter was not discharging an official function.' " (Govt. Br. 27 n. 31).

According to fundamental principles of logic, a class term denotes the objects to which it may correctly be applied. The more properties we add to the term's definition, the more restrictive is the set of its members. Accordingly, by adding to the property "persons acting for or on behalf of the United States . . ." the further requirement that such persons must be performing an "official function" and all of this activity must be "under or by authority of any such department, agency, or branch of Government . . .," we have restricted the scope of the statute.

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[4] The word "a" is defined as "-1 used as a function word before most singular nouns other than proper and mass nouns when the individual in question is undetermined, unidentified, or unspecified, esp. when the individual is first mentioned or called to notice (there was *a* tree in the field) (*a* man walked past him) (he bought *a* house, but this is not the house he bought). . . ." Webster's Third International Dictionary.

Therefore, in view of the failure of the Government to analyze the language of Section 201(a), the Government's conclusion that the plain meaning of the statute covers "persons administering federal programs" (Govt. Br. 15) is *a priori* and gratuitous. Furthermore, the Government's attempt to prop up its argument by quoting from the Supreme Court language about the sweeping scope of *other* criminal statutes is, at the very least, misleading.

(ii)

The Apparent Reason Why The Government Has Avoided An Analysis Of The Plain Meaning Of The Statute

As noted above, the most important class term to define in articulating the plain meaning of the statutory language of Section 201(a) is the adjectival phrase "acting for or on behalf of the United States or any department, agency, or branch of Government thereof in any official function." The nouns "United States," "agency," and "branch of Government" present no problem. What requires careful examination, however, is what is the plain meaning—*i.e.*, the meaning derivable from the mere reading of the words and, therefore, independent of any knowledge of Congressional intent or judicial construction—of "acting for or on behalf of . . . in any official function."

The words "acting for or on behalf of" another immediately suggest an agency relationship in which one person, an agent, takes the fiduciary responsibility of performing duties for another, the principal. Sometimes, however, the person who has an obligation to perform certain things for another and acts on his behalf is not the agent of the other but only under contract with the other. Such a person when not an employee of the other has an obligation to the other as an independent contractor.

Furthermore, since, according to the statutory language, it is for the Federal Government or some department, agency, or branch of the Federal Government "for whom and on whose behalf" the class of persons acts, and also this class of persons is deemed chargeable as a Federal public official, another plain meaning that suggests itself is that such persons are Federal inspectors. Such inspectors, even though not employed by the Federal Government, have the duty of applying standards for or on behalf of the Federal Government.

The phrase, "in any official function," would seem to further restrict the class of persons covered by the statute. While all those who inspect for the Federal Government and all Federal agents who perform acts within the scope of their agency would automatically satisfy the requirement of "in any official function," and thereby be subject to Section 201(a) as public officials, it seems that the vast majority of persons with a contractual relationship with the Federal Government are not properly regarded as performing an "official function" in fulfilling their obligations. Thus, for example, it would not seem proper to prosecute under the statute a building contractor who had a contract with some agency of the Federal Government and took kickbacks from a sub-contractor. Accordingly, it seems that it would have to be decided on a case-by-case basis whether someone with a contractual relationship with the Federal Government is acting "in any official function" and "under or by authority of any . . . department, agency, or branch of Government. . . .," and is thereby subject to Section 201(a).

Clearly, petitioners, in their employment with UNI, are not Federal inspectors or agents and never entered into a contract with the Federal Government. The Government, however, bent on engulfing petitioners within the net of the statutory language, rejected these three categories as the all-inclusive and only ways someone could act "for or on behalf of the United States in any official function" without being a Federal employee. *See, e.g.*, Govt. Br. 22-23.

(iii)

Once The Government Concluded, *A Priori* And Gratuitously, That Anyone Who Administers A Federally Funded Program Is Subject To The Bribery Statute, The Government Provided Corroboration For Its Conclusion In A Series Of Question-Begging Arguments

The Government asserted that a substantial consensus exists in case law that "persons carrying on activities authorized by statute, regulation, contract, or agreement as part of a federally sponsored and supervised program are 'acting for or on behalf of the United States . . . in [an] official function' within the meaning of 18 U.S.C. 201(a)." (Govt. Br. 23). However, almost every case in which the court has found the defendant properly charged and convicted under Section 201(a) was justified by the court, or at least could have been so justified, under one of the three above rubrics—namely, the alleged bribe interfered with the integrity of a Federal inspector or an agency or contractual relationship with the Federal Government or one of its agencies, departments, or branches thereof. The two cases that are exceptions are *United States* v. *Hinton*, 683 F.2d 195 (7th Cir. 1982) (J.A. 75), the lower court's decision in the instant case, and *United States* v. *Mosley*, 659 F.2d 812 (7th Cir. 1981). Both of these Seventh Circuit decisions are aberrations.[5]

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[5] *Mosley* is a closer case than the instant case. In *Mosley*, the court affirmed the conviction of the defendant under Section 201. Mosley, employed as a CETA Intake and Eligibility Officer by the Illinois Bureau of Employment Security, allegedly took bribes in exchange for preferential treatment to CETA job applicants. The court based its decision on "substantial federal Government supervision of the local 'prime sponsors.' " *Id.* at 814. It stated that Congress had never intended to abdicate Federal control of CETA programs but had provided that state and other local governmental units serve as

1. Because, according to the Government, the contractors who dealt with petitioners recognized that the value in dealing with them was derived from their administration of federal funds, the Government argued that petitioners were "public officials" according to the very test enunciated in the Brief for Petitioners. (Govt. Br. 16). But such a conclusion, that contractors dealt with petitioners as a "surrogate, a vicar, a deputy for the Federal Government," follows only if what is at issue is assumed—namely, that persons who administer Federal funds are *ipso facto* "surrogates, vicars, or deputies for the Federal Government."

The Government has not, however, provided even a modicum of evidence that those who administer Federal funds are thereby subject to Section 201 as "public officials." So, also, it does not follow, as the Government implies in another place (Govt. Br. 11), that a "person connected with the administration of federal programs" is performing "activities for the Government in an official function."

2. The Government quoted approvingly from a First Circuit case that the clear purpose of the Federal bribery statute is "to protect the public from the evil consequence of corruption in the public service." (Govt. Br. 16.). But the only way that prosecuting petitioners can be viewed as protecting the public

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prime sponsors simply to make the program more efficient and responsive to local needs. *Id.* at 815.

Mosley, however, was a State of Illinois employee and thus subject to being hired and fired by the State and not the Federal Government. He could not be deemed a Federal inspector or someone with an agency relationship with the Federal Government or someone under contract with the Federal Government. In *Mosley*, contrary to the instant case, however, the State of Illinois as a prime sponsor had a contractual relationship with the Federal Government. (To be precise, "[t]he City of Chicago was the 'Prime Sponsor' of its CETA program. However, through a contract between the City and the United States Department of Labor . . ., IBES was substituted for the City to perform intake, assessment and referral services. . . .") (*Id.* at 813 n. 1).

from "the evil consequences of corruption in the public service" is precisely by assuming what is at issue—namely, that petitioners in their employment with UNI were "in the public service." And, in the context of Section 201(a), the assumed "public service" must be "Federal public service."

3. The Government concluded its long review of the legislative history of Section 201(a) in particular and bribery statutes within the common law in general, with the statement that "Congress' purpose [in the present 1962 statute] was to speak expansively to cover all persons who exercise official power for or on behalf of the federal government."[6] (Govt. Br. 22). But the expression "persons who exercise official power for or on behalf of the federal government" is, on its face, neither expansive nor restrictive.

4. According to the Government, the Federal Government has "a strong and legitimate interest in prosecuting petitioners for their misuse of government funds" (Govt. Br. 38); and Section 201(a) may very well be the only statute under which petitioners are reasonably subject to prosecution. For, "[t]he purpose of the federal bribery statute is to assure that federal governmental powers are exercised honestly and are not corrupted by inducements for private gain." (Govt. Br. 39).

Here, again, the Government is guilty of a circular argument—of assuming that petitioners, as employees of UNI, in their alleged taking of kickbacks from private contractors, were misusing "federal governmental powers." *Id.* Furthermore, the Government is making use of an illegitimate argument in suggesting that the Court must hold the applicability of Section 201(a) to petitioners since, otherwise, petitioners might escape criminal prosecution. As Justice Rehnquist, speaking for the majority in *United States* v. *Maze*, 414 U.S. 395 (1974), in construing 18 U.S.C. 1341, the mail-fraud statute, has stated: "If the Federal Government is to engage in combat against fraudulent schemes not covered by the statute, it must do so at the initiative of Congress and not the Court." *Id.* at 405 n. 10.

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[6] It seems incredible that the Government should argue for the recent great expansion of the scope of the bribery statute, when it has found the language "any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof" in an 1878 Federal bribery statute. (Govt. Br. 18).

CONCLUSION

Because petitioners in their employment with UNI cannot be deemed to have served as either Federal inspectors or agents for the Federal Government or individuals with contractual obligations with the Federal Government, their convictions should be reversed.

Respectfully submitted,

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No. 82-5279-CFY Title: Arthur Dixson, Petitioner
Status: GRANTED v.
United States

Docketed: Court: United States Court of Appeals
August 24, 1982 for the Seventh Circuit

Vide: Counsel for petitioner: Morano, Donald V.
82-5331

Counsel for respondent: Solicitor General

Entry	Date	Note	Proceedings and Orders
1	Aug 24 1982	G	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Aug 30 1982		Waiver of right to respond filed.
4	Sep 16 1982		DISTRIBUTED. October 8, 1982
5	Oct 1 1982	P	Response requested. (Due October 30, 1982 - NONE RECEIVED)
7	Oct 28 1982		Order extending time to file response to petition until November 28, 1982.
8	Nov 19 1982		Brief of respondent United States in opposition filed. VIDED.
9	Nov 24 1982		DISTRIBUTED. December 10, 1982
10	Nov 30 1982	X	Reply brief of petitioner Arthur Dixson filed. VIDED.
12	Dec 13 1982		Petition GRANTED. The cases are consolidated and a total of one hour is allotted for oral argument. **
13	Dec 23 1982	G	Motion of petitioner Arthur Dixson for appointment of counsel filed.
14	Dec 27 1982	G	Motion of petitioner James Lee Hinton for appointment of counsel filed.
15	Dec 28 1982		DISTRIBUTED. Jan. 7, 1983. (Above motions).
18	Jan 10 1983		DISTRIBUTED. Jan. 14, 1983. (Motions of petitioners for appointment of counsel).
19	Jan 24 1983		Motion for appointment of counsel GRANTED and it is ordered that Donald V. Morano, Esquire, of Chicago, Illinois, is appointed to serve as counsel for the petitioner Arthur Dixson in this case.
20	Jan 24 1983		Motion for appointment of counsel GRANTED and it is ordered that Donald V. Morano, Esquire, of Chicago, Illinois, is appointed to serve as counsel for the petitioner James Lee Hinton in this case.
21	Jan 27 1983		Joint appendix filed. VIDED.
22	Jan 27 1983		Brief of petitioner Dixson filed. VIDED.
23	Jan 27 1983		Brief of petitioner Hinton filed. VIDED.
25	Feb 18 1983		Order extending time to file brief of respondent on the merits until March 12, 1983.
26	Mar 11 1983		Brief of respondent United States filed. VIDED.
27	Mar 16 1983		Record filed.
28	Mar 6 1983		Certified original record, 2 volumes & exhibits received
29	Jul 8 1983		CIRCULATED.
30	Aug 15 1983		SET FOR ARGUMENT. Wednesday, October 12, 1983. (1st case) This case is consolidated with No. 82-5331. (1 hr.)
31	Sep 14 1983	X	Reply brief of petitioners filed. VIDED.
32	Oct 12 1983		ARGUED.